



# The Atchison, Topeka and Santa Fe Railway Company

80 East Jackson Boulevard  
Chicago, Illinois 60604

Writer's Direct: (312) 786-6824

July 17, 1989

RECORDATION #3 16235-1423 FILED 1423

JUL 20 1989 -11 05 AM .

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

Re: The Atchison, Topeka and Santa Fe Railway Company  
Equipment Trust, Series U, dated March 1, 1989

Dear Mr. Bayne:

Enclosed herewith please find an original and one counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This attached secondary document is the Second Amended and Restated Equipment Trust Agreement dated as of March 1, 1989, relating to The Atchison, Topeka and Santa Fe Railway Company Equipment Trust Agreement, Series U, dated as of March 1, 1989.

That Equipment Trust is the primary document to which this agreement is and connected is recorded under Recordation No. 16235.

The name and addresses of the parties to this document are:

The Company, as Lessee:

The Atchison, Topeka and Santa Fe Railway Company  
80 East Jackson Boulevard  
Chicago, IL 60604

The Trustee, as Trustee and Lessor:

Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, IL 60690

The equipment covered by the Second Amended and Restated Equipment Trust Agreement, Series U, is described on Exhibit 1 attached hereto.


JUL 20 10 54 AM '89  
NOTION OF LITIGATIONS UNIT

Interstate Commerce Commission  
July 17, 1989  
Page 2

For the convenience of the parties, I have enclosed additional counterparts of the Agreement, which I would like to have returned to me bearing the recordation information.

Enclosed is a check in payment of the Commission's prescribed recordation fee.

Very truly yours,

  
Jeffrey R. Moreland  
Vice President-Law

IEW/LBM/dt

Exhibit 1

EQUIPMENT TRUST, SERIES U

Dated March 1, 1989

SCHEDULE A

| <u>No. of<br/>Units</u> | <u>Description</u>   | <u>Estimated Costs</u> |                            |
|-------------------------|--|------------------------|----------------------------|
|                         |  | <u>Per Unit</u>        | <u>Total</u>               |
| 10                      | GP60, 3800 H.P., four axle, diesel-electric locomotives (including event recorders); General Motors Corporation (Electro-Motive Division), builder. Nos. 4020, 4022, 4024, 4026, 4028, 4030, 4032, 4034, 4036, 4038. | \$1,253,205            | \$12,532,050               |
| 10                      | GP60, 3800 H.P., four axle, diesel-electric locomotives; General Motors Corporation (Electro-Motive Division), builder. Nos. 4021, 4023, 4025, 4027, 4029, 4031, 4033, 4035, 4037, 4039.                             | 1,258,055              | 12,580,550                 |
| 10                      | Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders; General Electric Company, builder. Nos. 7430, 7432, 7434, 7436, 7438, 7440, 7442, 7444, 7446, 7448.                        | 1,238,329              | 12,383,290                 |
| 10                      | Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives; General Electric Company, builder. Nos. 7431, 7433, 7435, 7437, 7439, 7441, 7443, 7445, 7447, 7449.   | <u>1,231,489</u>       | <u>12,314,890</u>          |
| 40                      | TOTAL UNITS  |                        | <u><u>\$49,810,780</u></u> |

**Interstate Commerce Commission**  
Washington, D.C. 20423

7/20/89

OFFICE OF THE SECRETARY

Jeffrey R. Moreland  
Vice President-Law  
The Atchison, Topeka & Santa Fe Railway Co  
80 East Jackson Blvd.  
Chicago, Illinois 60604

Dear: **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/20/89 , at 11:05am , and assigned recordation number(s). 16235-B & 16271-A

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

RECORDATION NO. 16235B FILED 1423  
JUL 20 1989 -11 05 AM  
INTERSTATE COMMERCE COMMISSION

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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
EQUIPMENT TRUST SERIES U

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SECOND AMENDED AND RESTATED  
EQUIPMENT TRUST AGREEMENT  
Dated as of March 1, 1989

Between

HARRIS TRUST AND SAVINGS BANK,  
as Trustee,

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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### SCHEDULE A



## **SECOND AMENDMENT AND RESTATED EQUIPMENT TRUST AGREEMENT**

This Second Amended and Restated Equipment Trust Agreement, dated as of March 1, 1989 (the or this "Agreement"), by and between HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, as Trustee, (hereinafter called the Trustee) and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, (hereinafter called the Company),

### **WITNESSETH:**

WHEREAS, words and phrases not otherwise defined herein shall have the meanings assigned thereto in Article Two of this Agreement; and

WHEREAS, the Company has contracted, or will contract for, the construction and the transfer to the Trustee of the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, The Atchison, Topeka and Santa Fe Railway Company Equipment Trust Certificates, Series U (hereinafter called Trust Certificates), are to be issued and sold in one or more installments having an aggregate principal amount of not exceeding \$50,880,000 (the "Total Authorized Issue"), and the net proceeds of such sale, together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided, will constitute a fund to be equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as The Atchison, Topeka and Santa Fe Railway Company Equipment Trust, Series U, and to be applied by the Trustee from time to time in all or part payment of the Cost of the Trust Equipment, the remainder, if any, of the Cost thereof to be paid out of Advance Rentals to be paid by the Company as provided herein; and

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the forms hereinafter set forth; and

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof, premium, if any, and dividends and interest thereon as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

## **ARTICLE ONE**

### **FORMS OF TRUST CERTIFICATES AND GUARANTY**

**SECTION 1.1. Forms of Trust Certificates and Guaranty.** The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms:

[Form of Fixed Rate Trust Certificate]

PURSUANT TO THE EQUIPMENT TRUST AGREEMENT,  
THE EQUIPMENT TRUST CERTIFICATES ARE BEING  
ISSUED TO FINANCE NOT EXCEEDING 100%  
OF THE COST OF THE TRUST EQUIPMENT

No. UR \_\_\_\_\_

\$ \_\_\_\_\_

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Equipment Trust Certificates, Series U

Total Authorized Issue: \$50,880,000

9.26% Trust Certificate  
due March 1, 2004

HARRIS TRUST AND SAVINGS BANK, Trustee

Dividends Payable Semiannually

THE HARRIS TRUST AND SAVINGS BANK, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement, dated as of March 1, 1989, as amended and restated ("Agreement"), by and between the Trustee and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Company"), hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of \_\_\_\_\_ Dollars in THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EQUIPMENT TRUST, SERIES U, payable at its principal office in the City of Chicago, State of Illinois in fifteen equal annual installments of principal on each March 1 from and including March 1, 1990 to and including the final due date stated above without the need for presentation and surrender of this Trust Certificate to the undersigned and to payment of dividends on said principal amount semiannually on March 1 and September 1 of each year, beginning as of September 1, 1989, at the rate per annum specified in the heading hereof from and including the date hereof, until said maturity date, at said office of the undersigned, with interest at said dividend rate plus 1% on any unpaid principal, premium, if any, and dividends to the extent that it shall be legally enforceable, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts but payable only from and out of Rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Agreement. Notwithstanding the provisions of the preceding sentence, in the case of payments of principal, premium, if any, and dividends on this Trust Certificate, the undersigned, upon request of the registered holder hereof, will, subject to timely receipt of Rental payments under the Agreement, mail its check to such registered holder at his address shown on the registry books maintained by the undersigned, or, upon the request of the holder for wire transfer, will wire immediately available funds to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee prior to the date that payment is due. Upon payment in

full of the principal, premium, if any, and dividends on this Trust Certificate and upon written request of the Trustee or the Company to do so, the registered holder hereof shall surrender this Trust Certificate to the Trustee.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or, in lieu thereof, as provided in the Agreement, cash or obligations defined in the Agreement as "Investments") is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the undersigned at its principal office in the City of Chicago, State of Illinois) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Trust Certificate, assents.

The Trust Certificates are issuable in denominations of \$1,000 and any larger integral multiple of \$1,000, as fully registered Trust Certificates, and the several denominations of Trust Certificates are interchangeable upon presentation thereof at the principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

Subject to the provisions of Section 3.5 of the Agreement, this Trust Certificate is transferable by the registered holder hereof, in person or by duly authorized attorney, on the books of the undersigned upon surrender hereof to the undersigned at its said office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new Trust Certificate or Certificates of the same maturity and rate and in authorized form and denominations will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer, the undersigned and the Company shall be entitled to deem and treat the registered holder hereof as the absolute owner for the purpose of receiving payment of principal, premium, if any, and dividends and for all other purposes and shall not be affected by any notice to the contrary.

The Trust Certificates are not subject to redemption in whole or in part except as may be expressly permitted by the terms of the Agreement. The Trust Certificates may be redeemed upon at least thirty days, but not more than sixty days', notice at the option of the Company, as a whole or in part, at any time or times on or after March 1, 1996 at par together with the applicable Make-Whole Premium Amount (as defined in the Agreement) and accrued interest at the Applicable Dividend Rate (as defined in the Agreement) to the date fixed for redemption.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount and dividends accrued thereon represented by this Certificate may be declared due and payable, as provided in the Agreement.

This Certificate shall not be deemed a promise to pay of the Trustee and shall not be valid unless manually signed by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the signature of one of its Vice Presidents and its corporate seal to be hereunto affixed and to be attested by an Assistant Secretary.

Dated as of

HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

[Form of Guaranty]

GUARANTY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, for a valuable consideration, hereby absolutely and unconditionally guarantees to the registered holder of the within Trust Certificate the prompt payments of the principal of said Certificate, Make-Whole Premium Amount, if any, and of dividends thereon at the rate specified in said Certificate, with interest at said dividend rate plus 1% on any unpaid principal, unpaid Make-Whole Premium Amount, if any, and (to the extent that it shall be legally enforceable) interest on any unpaid dividends from and after the due date thereof until such principal, Make-Whole Premium Amount, if any, and dividends shall be paid, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
Senior Vice President-Finance and Chief  
Financial Officer

[Form of Period Rate Trust Certificate]

PURSUANT TO THE EQUIPMENT TRUST AGREEMENT,  
THE EQUIPMENT TRUST CERTIFICATES ARE BEING  
ISSUED TO FINANCE NOT EXCEEDING 100%  
OF THE COST OF THE TRUST EQUIPMENT

No. UR-\_\_\_\_\_

\$ \_\_\_\_\_

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Equipment Trust Certificates, Series U

\_\_\_\_ Installment

Total Authorized Issue: \$50,880,000

Period Rate Trust Certificate  
due March 1, \_\_\_\_\_

HARRIS TRUST AND SAVINGS BANK, Trustee

Dividends Payable Semiannually

THE HARRIS TRUST AND SAVINGS BANK, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement, dated as of March 1, 1989, as amended and restated ("Agreement"), by and between the Trustee and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Company"), hereby certifies that \_\_\_\_\_ or registered assigns, is entitled to an interest in the principal amount of \_\_\_\_\_ Dollars in THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EQUIPMENT TRUST, SERIES U, payable on the due date stated above, upon presentation and surrender of this Certificate to the undersigned at its principal office in the City of Chicago, State of Illinois, and to payment of dividends on said principal amount semiannually on March 1 and September 1 of each year beginning as of September 1, 1989, at the Period Rate specified herein from the date hereof, until said due date, at said office of the undersigned, with interest at said dividend rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of Rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Agreement. Notwithstanding the provisions of the preceding sentence, in the case of payments of dividends on this Trust Certificate the undersigned, upon request of the registered holder hereof, will, subject to timely receipt of Rental payments under the Agreement, mail its check to such registered holder at his address shown on the registry books maintained by the undersigned, or, upon the request of the holder for wire transfer, will wire immediately available funds to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee prior to the date that payment is due.

The Period Rate for payment of dividends on the principal amount of this Certificate shall be the rate, stated as a per annum rate, equal to the yield to maturity,

plus \_\_\_\_\_ basis points, on United States Treasury Bills having, at the date of determination of the Period Rate, a period to maturity of six months (provided, however, that the Period Rate for the first dividend period following the original issue of this Certificate shall be the yield to the maturity, plus \_\_\_\_\_ basis points, on United States Treasury Bills having, at the date of such issue, a period to maturity equal to the period until the first scheduled dividend payment date on this Certificate). The Period Rate shall be determined on the date of original issue and thereafter on March 1 and September 1 of each year and shall apply to the immediately succeeding dividend payment period. Trustee shall advise the Period Rate Holder of each Period Rate promptly following its determination by the Trustee. Upon the transfer of any principal amount of this Certificate, the Period Rate for the amount so transferred shall, however, become the rate equal to the rate on comparable trust certificates of similar period to maturity. Said Period Rate as so determined upon such transfer shall, as of the date of transfer on the books of the Trustee, become the Fixed Rate on the principal amount transferred, and said principal amount shall bear dividends at that rate thereafter.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or, in lieu thereof, as provided in the Agreement, cash or obligations defined in the Agreement as "Investments") is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. The Certificate is entitled to the security and the benefit of the Agreement as it may be amended, restated or supplemented. Reference is made to the Agreement (a copy of which is on file with the undersigned at its principal office in the City of Chicago, State of Illinois) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The Trust Certificates are issuable in denominations of \$1,000, and any larger integral multiple of \$1,000, as fully registered Trust Certificates, and the several denominations of Trust Certificates are interchangeable upon presentation thereof at the principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

Subject to the provisions of Section 3.5 of the Agreement, this Certificate is transferable by the registered holder hereof, in person or by duly authorized attorney, on the books of the undersigned upon surrender hereof to the undersigned at its said office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon, subject to the provisions of the next following paragraph, a new Certificate or Certificates of the same maturity and rate and in authorized form and denominations will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer, the undersigned and the Company shall be entitled to deem and treat the registered holder hereof as the absolute owner for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

The provisions of this Certificate and of Section 3.5 of the Agreement notwithstanding, accrued and unpaid dividends on this Certificate determined at the applicable Period Rate or Period Rates prior to the transfer of any principal amount of this Certificate shall, as to said principal amount, be payable on the next scheduled dividend payment date to the holder holding this Certificate immediately prior to transfer,

and the new Trust Certificate issued for said principal amount upon transfer pursuant to Section 3.5 shall be dated as of the date of the transfer, shall as of that date thereupon bear interest at the Fixed Rate determined on that date, and shall not otherwise be subject to the provisions of this paragraph or the second paragraph of this Certificate.

The Trust Certificates are not subject to redemption in whole or in part except as expressly permitted by the Agreement.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount and dividends accrued thereon represented by this Certificate may be declared due and payable, as provided in the Agreement.

This Certificate shall not be deemed a promise to pay of the Trustee and shall not be valid unless manually signed by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the signature of one of its Vice Presidents and its corporate seal to be hereunto affixed and to be attested by an Assistant Secretary.

Dated as of

HARRIS TRUST AND SAVINGS BANK  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

#### GUARANTY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Trust Certificate the prompt payment of the principal of said Certificate, and of dividends thereon at the rate specified in said Certificate, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
Senior Vice President - Finance  
and Chief Financial Officer

## ARTICLE TWO

### DEFINITIONS

**SECTION 2.1. Definitions.** The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

**"Advance Rentals"** shall mean the amounts payable by the Company to the Trustee as Advance Rentals under Sections 5.2 and 6.4(A).

**"Affiliate"** of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

**"Applicable Dividend Rate"** shall mean the Period Rate for the period from and including the date of issuance of the Period Rate Trust Certificates to but not including the Purchase Date, if any, and the Fixed Rate from and including the Purchase Date to and including the date of payment in full of the Fixed Rate Trust Certificates. If for any reason whatsoever Fixed Rate Trust Certificates are not issued and sold, Applicable Dividend Rate shall mean the Period Rate from and including the date of issuance of the Period Rate Trust Certificates to and including the date of payment in full thereof.

**"Casualty Occurrence"** shall have the meaning specified in Section 6.7.

The **"Casualty Value"** of any unit of Equipment shall be considered to be the Cost thereof less depreciation accrued on such Equipment on each March 1, commencing March 1, 1990, at 1/15th of the Cost thereof per annum.

**"Company"** shall mean The Atchison, Topeka and Santa Fe Railway Company and any successor or successors thereto.

**"Cost"**, when used with respect to Equipment, shall mean the actual cost thereof, which Cost shall not exceed the fair value thereof, invoiced to the Trustee hereunder, which shall be the cost invoiced by the manufacturer of the Equipment to the Trustee, and when used with respect to Replacement Units, shall mean the original cost thereof less depreciation accrued thereon on each March 1 at 1/15th of such original cost per annum, and in any such case shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission in effect at such time, sound accounting practice.

**"Date of Original Issue"** with respect to each installment of the Trust Certificates shall mean the date such installment is executed and issued to the initial purchasers thereof pursuant to Section 3.1 of this Agreement.



**"Deposited Cash"** shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 3.1, including any Advance Rentals due therewith, and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 9.9, and (b) any sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) and on deposit with the Trustee.

**"Equipment"** shall mean the forty new locomotives more fully described in Schedule A hereto, which shall have been first put into service no earlier than March 1, 1989.

**"Event of Default"** shall mean any event specified in Section 7.1 to be an Event of Default.

**"Fixed Rate"** shall mean the rate of 9.26% per annum (computed on the basis of a 360 day year consisting of twelve 30-day months) all is specified in the Fixed Rate Trust Certificates.

**"Fixed Rate Agreements"** shall mean the agreement or agreements entered into by the Company and the Period Rate Holder with one or more investors or underwriters, pursuant to which such investors or underwriters shall purchase the Fixed Rate Trust Certificates upon the terms and conditions therein set forth.

**"Fixed Rate Holder"** shall mean any holder, from time-to-time, of the Fixed Rate Trust Certificates issued and outstanding under this Agreement.

**"Fixed Rate Holders"** shall mean collectively all of the holders of the Fixed Rate Trust Certificates.

**"Fixed Rate Trust Certificates"** shall mean the Trust Certificates issued by the Trustee to the Fixed Rate Holders on the Purchase Date pursuant to the Fixed Rate Agreements and any other trust certificates having a Fixed Rate and issued under Section 3.1 or in any transfer, exchange or replacement of any of the foregoing, other than the Period Rate Trust Certificates.

**"Government Securities"** shall mean bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of interest and principal.

The word **"holder"** when used with respect to Trust Certificates shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the registered owner of any Trust Certificate.

**"Investments"** shall mean: (a) Government Securities; (b) commercial paper rated in the highest grade by a nationally recognized credit rating agency; and (c) bankers' acceptances and certificates of deposit (including Eurodollar certificates of deposit) issued by (i) any bank or trust company or a foreign branch thereof which is organized under the laws of the United States or any state thereof and has total deposits in excess of One Billion Dollars; or (ii) any full United States branch of a foreign bank if such foreign bank has total deposits (United States Dollar Equivalent) in excess of Ten Billion Dollars.

**"Make-Whole Premium Amount"** at any time with respect to the Fixed Rate Trust Certificates shall equal the excess of (a) the present value at the time of redemption of each remaining payment of principal and interest on and in respect of the Trust Certificates being redeemed that would otherwise become due and payable (without giving effect to such redemption), determined by discounting semi-annually each such amount utilizing an interest factor equal to the Treasury Yield over (b) the aggregate principal amount of the Trust Certificates then being redeemed. To the extent that the Treasury Yield at the time of such redemption is equal to or higher than 9.26%, the Make-Whole Premium Amount is zero. Such present value shall be determined on and as of the third business day next preceding the date of redemption by discounting semi-annually the amounts of such installments from their respective installment dates or dividend payment dates, as the case may be, to the date of such redemption. The Company shall, not later than the second business day prior to the date fixed for such redemption, give written notice to the holders of the Fixed Rate Trust Certificates of the amount of such Make-Whole Premium Amount, which notice shall specify in reasonable detail the basis for its determination. Said Make-Whole Premium Amount shall be payable only pursuant to an optional redemption of Fixed Rate Trust Certificates by the Company pursuant to Section 4.1 of this Agreement.

**"Officer's Certificate"** shall mean a certificate signed by the Chairman of the Board, the President, the Executive Vice President, any Senior Vice President, or any other Vice President of the Company.

**"Opinion of Counsel"** shall mean an opinion of counsel (who may be counsel to the Company) satisfactory to the Trustee.

**"Period Rate Holder"** shall mean any holder from time-to-time of the Period Rate Trust Certificates issued and outstanding pursuant to this Agreement.

**"Period Rate Holders"** shall mean collectively all of the holders of the Period Rate Trust Certificates.

**"Period Rate"** shall mean the rate to be borne by Period Rate Trust Certificates as specified pursuant to such Period Rate Trust Certificates.

**"Period Rate Trust Certificates"** shall mean the Trust Certificates issued by the Trustee to the Period Rate Holders pursuant to Section 3.1 of this Agreement and any other trust certificates issued hereunder in an exchange or replacement therefor, other than Fixed Rate Trust Certificates.

**"Principal Office"** shall mean the office of the Trustee in the City of Chicago, State of Illinois at which its corporate trust business shall from time to time be conducted.

**"Purchase Date"** shall mean the date of issuance or sale of the Fixed Rate Trust Certificates pursuant to the Fixed Rate Agreements.

**"Remaining Dollar-years"** in respect of the Trust Certificates being redeemed means the product obtained by (1) multiplying (A) the amount of each then remaining required principal payment (including payment at final maturity), by (B) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination of the Weighted Average Life to Maturity of the Trust Certificates

being redeemed and the date such required payment is due, and (2) totaling all the products obtained in (1).

**"Rental"** shall mean the rental payments required by Section 6.4(B).

**"Replacement Funds"** shall have the meaning specified in Section 6.10.

**"Replacement Units"** shall mean have the meaning specified in Section 6.7.

**"Request"** shall mean a written request for the action therein specified signed on behalf of the Company by the Chairman of the Board, the President, the Executive Vice President, any Senior Vice President, or any Vice President of the Company and delivered to the Trustee.

**"Total Authorized Issue"** shall mean an aggregate principal amount of not exceeding \$50,880,000 of Trust Certificates executed and issued under Section 3.1.

**"Treasury Yield"** with respect to the Trust Certificates to be redeemed pursuant to Section 4.1 means (a) in the case where the Weighted Average Life to Maturity of such Trust Certificates being redeemed is less than one year after the date on which such Trust Certificates are to be redeemed, 50 basis points over the average yield to maturity on a government bond equivalent basis of the applicable United States Treasury Bill (as compiled by and published by the United States Federal Reserve Statistical Release designated H.15(519) or its successor publication) corresponding in weighted average life to maturity to such Trust Certificates, and (b) in the case where the Weighted Average Life to Maturity of such Trust Certificates being redeemed is one year or more after such date, 50 basis points over the average yield to maturity on a government bond equivalent basis of the most actively traded United States Treasury Note (as reported by Cantor Fitzgerald Securities Corp. on page 5 of Telerate Systems, Inc., a financial news service or, if such service is no longer in the business of reporting such information, any other financial news reporting service reasonably acceptable to the Company and the Trustee) corresponding in weighted average life to maturity to such Trust Certificates (or if there is no exactly corresponding maturity, an interpolation of the yields for the two most closely corresponding Treasury Note maturities).

**"Trust Certificates"** shall mean the Period Rate Trust Certificates, the Fixed Rate Trust Certificates and any other trust certificates issued hereunder in an authorized transfer, exchange or replacement therefor.

**"Trust Equipment"** shall mean all Equipment and Replacement Units at the time subject to the terms of this Agreement.

**"Trustee"** shall mean HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

**"Weighted Average Life to Maturity"** in respect of the Trust Certificates being redeemed means, as at the time of determination, the number of years obtained by dividing the then Remaining Dollar-years of such Trust Certificates by the outstanding principal payments on such Trust Certificates.

All references herein to Articles, Sections and other subdivisions refer to corresponding Articles, Sections and other subdivisions of this Agreement; and the words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

### **ARTICLE THREE**

#### **TRUST CERTIFICATES AND ISSUANCE THEREOF**

**SECTION 3.1. Original Issuance of Trust Certificates.** Upon the initial issuance and sale of any Trust Certificates hereunder, the amount equal to the net proceeds of the Trust Certificates so issued and sold shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. The Company shall forthwith, if necessary, deposit with the Trustee any Advance Rental payable by the Company to the Trustee under Section 6.4(A)(1) hereof. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment but, in the case of the issuance of Fixed Rate Trust Certificates, upon satisfaction of the conditions contained in Section 8 of the Fixed Rate Agreements, the Trustee shall as the Company shall direct by Request: execute and issue Period Rate Trust Certificates or Fixed Rate Trust Certificates in the aggregate principal amounts thereof so to be issued and sold hereunder.

The aggregate principal amount of all Trust Certificates which shall be executed and issued by the Trustee under this Section shall not exceed the Total Authorized Issue, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

**SECTION 3.2. Interests Represented by Trust Certificates; Dividends; Maturities.** Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. The principal amount of each Trust Certificate shall be due and payable in fifteen (15) equal annual installments of principal on March 1, from and including March 1, 1990 to and including March 1, 2004. Each Trust Certificate shall be dated as of the Date of Original Issue and will bear dividends on the unpaid principal amount thereof at the Applicable Dividend Rate, payable semiannually on March 1 and September 1, while outstanding, beginning September 1, 1989; provided, however, that for any Trust Certificate whose Date of Original Issue is less than one calendar month prior to a dividend payment date, the dividends thereon shall be payable beginning as of the first dividend payment date next following that dividend payment date. Trust Certificates which shall be executed and delivered by the Trustee in accordance with the provisions of Section 3.5 and 3.6 hereof shall be dated, and shall bear dividends from, the Date of Original Issue or the dividend payment date to which dividends shall have been paid next preceding or coinciding with the date of such execution and delivery, whichever is later to occur, except that Fixed Rate Trust Certificates sold by Period Rate Holders under Fixed Rate Agreements shall bear dividends only from the Purchase Date.

The principal, dividends, premium, if any, and interest on the Trust Certificates shall be payable at the Principal Office or agency of the Trustee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of

Rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. All monies received by the Trustee pursuant to Section 6.4(B)(3) and (4) shall be applied first to dividends and interest, second, to premium, if any, and third, to principal. Notwithstanding the provisions of the preceding sentence, the Trustee, upon request of the registered holder of a Trust Certificate, will, subject to timely receipt of Rental payments under Section 6.4(B), mail on the day each such payment is due its check to such registered holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such holder prior to the date the payment is due, or, upon request of the holder for wire transfer, will initiate a wire by 11:00 a.m., Chicago, Illinois, time, of immediately available funds to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee prior to that date. The Company agrees to make its Rental payments pursuant to Section 6.4(B) at such times and in such funds as will enable the Trustee to comply with this Section 3.2.

Upon payment in full of the principal, dividends, premium, if any, and interest on the Trust Certificates and upon written request of the Trustee or the Company to do so, the holders of the Trust Certificates shall surrender the same to the Trustee.

**SECTION 3.3. Forms of Trust Certificates and Guaranty.** The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 8.2 shall be in substantially the respective forms set forth in Article One hereof.

**SECTION 3.4. Execution by Trustee.** The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of its President, or one of its Vice Presidents and its corporate seal shall be affixed or imprinted thereon and attested by the signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been executed and issued by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates shall be adopted by the Trustee and be issued, authenticated and delivered as though such person had not ceased to be, or had then been, such officer of the Trustee and shall be as effective and binding as though such person had not ceased to be, or had then been acting as, such officer of the Trustee.

**SECTION 3.5. Trust Certificates; Denominations; Registration; Owners Thereof; Transfer or Exchange of Trust Certificates.** The Trust Certificates: shall be issuable in minimum denominations of \$1,000 or any larger integral multiple of \$1,000 and shall be numbered from UR-1 consecutively upward; shall be registered, as to both principal and dividends, in the name of the holders thereof; shall be transferable in whole or in part upon presentation and surrender thereof for registration of transfer at the Principal Office of the Trustee in the City of Chicago, State of Illinois, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Trust Certificates or by his duly authorized attorney, in form satisfactory to the Trustee, shall be dated as of the date of issue unless issued in an authorized exchange or substitution for another Trust Certificate or Trust Certificates bearing unpaid dividends from an earlier date, in which case they shall be dated as of such earlier date, shall have the Guaranty on such transferred Trust Certificate executed by the Company and shall entitle the registered holder to dividends, premium, if any, and installments of principal from the date thereof. The Trust Certificates to be exchanged shall be surrendered at the Principal Office of the Trustee in the City of Chicago, State of Illinois.

Upon sale by the Period Rate Holders of the Period Rate Trust Certificates on the Purchase Date under the Fixed Rate Agreements, the Trustee shall execute and issue Fixed Rate Trust Certificates in the aggregate principal amount of the Period Rate Trust Certificates so sold by the Period Rate Holders on the Purchase Date.

The Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates of the same maturity and rate and of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at the Principal Office of the Trustee.

Anything to the contrary herein notwithstanding, the parties hereto and any agent of the Trustee may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

The Trustee shall cause to be kept at its Principal Office in the City of Chicago, State of Illinois books for the registration and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

For any registration of transfer, exchange or discharge from registration, the Trustee may, and at the Request of the Company shall, require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith.

Except as may be otherwise provided in the Period Rate Trust Certificates with respect to the transfer of any principal amount of the Period Rate Trust Certificates, each Trust Certificate delivered pursuant to any provision of this Agreement, in exchange or substitution for, or upon the transfer of the whole or any part of one or more other Trust Certificates, shall carry all the rights to dividends, premium, if any, and installments of principal accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, except that the Fixed Rate Trust Certificates sold by Period Rate Holders shall bear dividends only from the Purchase Date and, notwithstanding anything contained in this Agreement, such Trust Certificates shall be so dated that neither gain nor loss in dividends, premium, if any, or principal shall result from such exchange, substitution or transfer.

Except pursuant to a Request, the Trustee shall not be required to transfer or exchange any Trust Certificate for a period of five business days next preceding any dividend payment date.

**SECTION 3.6. Replacement of Mutilated or Lost Trust Certificates.** In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new Trust Certificate of like dividend rate, tenor, maturity and date, and bearing the same or a different number as the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate. The Company shall execute its Guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of

the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange, provided, however, that if the holder of such Trust Certificate is one of the initial holders of the Trust Certificates (or an Affiliate thereof), or is a bank, insurance company, pension fund, fraternal benefit society, endowment or other organization or financial institution that regularly acquires debt securities for investment having a minimum capital and surplus of at least \$50,000,000, the written undertaking of such holder delivered to the Trustee and the Company shall be sufficient security and indemnity under this Section 3.6. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates, and shall preclude (to the extent lawful) any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

## **ARTICLE FOUR**

### **OPTIONAL REDEMPTION AND PREPAYMENT OF FIXED RATE TRUST CERTIFICATES**

No prepayment or redemption of the Trust Certificates may be made except to the extent and in the manner expressly provided in this Agreement.

**SECTION 4.1. Optional Redemption of Fixed Rate Trust Certificates.** The Company may, at its option, at any time or times on or after March 1, 1996 and prior to maturity, redeem all, or, from time to time, any part in a minimum principal amount of \$500,000 or larger multiples of \$100,000, of the Fixed Rate Trust Certificates at par together with the applicable Make-Whole Premium Amount, if any, and accrued dividends to the date fixed for redemption.

**SECTION 4.2 Pro Rata Redemptions.** All redemptions hereunder of less than the entire outstanding aggregate principal amount of all Fixed Rate Trust Certificates are to be made pro rata among all outstanding Fixed Rate Trust Certificates as provided in Section 4.4.

**SECTION 4.3. Notice of Redemption.** In case the Company shall desire to exercise any right to redeem all, or, as the case may be, any part of the Fixed Rate Trust Certificates in accordance with the rights reserved so to do, the Company or, at its Request, the Trustee, in the name of and at the expense of the Company, shall give notice of such redemption to each Fixed Rate Holder.

Each such notice of redemption shall specify the date fixed for the redemption and the principal amount of the Fixed Rate Trust Certificates to be redeemed on such date, and, as hereinafter provided, the applicable Make-Whole Premium Amount, if any, and shall state that the payment for redemption of the portions thereof to be redeemed will be made in the manner contemplated by Section 3.2, that dividends accrued to the date fixed for the redemption will be paid as specified in said notice, and that on or after said date, if such redemption shall then be made, dividends thereon or the portion thereof to be redeemed will cease to accrue. In case the Fixed Rate Trust Certificates

are to be redeemed in part only, the notice shall state the portion of the principal amount of each Fixed Rate Trust Certificate to be redeemed.

Notice of redemption shall be given to the Fixed Rate Holders by mailing such notice of redemption in the manner provided in Section 10.5 to each Fixed Rate Holder at the last address of such holder as it appears in the register of Trust Certificates not less than 30 nor more than 60 days prior to the date fixed for redemption. Without limiting the foregoing, the Company shall give notice in the manner provided in Section 10.5 to each Fixed Rate Holder no later than the second business day prior to the date fixed for redemption pursuant to Section 4.1 of its calculation of the Make-Whole Premium Amount, if any, calculated on and as of the third business day next preceding such redemption date, which notice shall specify in reasonable detail the basis for its determination or calculation.

**SECTION 4.4 When Trust Certificates Called for Redemption Become Due and Payable.** Notice of redemption having been mailed in the manner provided in Section 4.3, the Fixed Rate Trust Certificates or portions of such Trust Certificates specified in such notice shall become due and payable on the date and at the place stated in such notice at par, together with the applicable Make-Whole Premium Amount, if any, and interest on overdue payments at the dividend rate plus 1% and dividends accrued to the date fixed for redemption and on and after such date fixed for redemption (unless the Company shall default in the payment of such Trust Certificates so called for redemption) dividends on such Fixed Rate Trust Certificates or portions of Fixed Rate Trust Certificates shall cease to accrue. On presentation and surrender of such Fixed Rate Trust Certificates at said place of payment in said notice specified, the said Fixed Rate Trust Certificates, or the specified portions thereof, shall be paid and redeemed by the Company, at par, together with interest on overdue payments at the dividend rate plus 1%, together with the applicable Make-Whole Premium Amount, if any, and dividends accrued to the date fixed for redemption (except that if such date is a semiannual dividend payment date, such payment shall not include accrued dividends which shall be paid in the usual manner). Such Fixed Rate Trust Certificates shall be presented and surrendered at said place of payment.

Upon any partial redemption of the Fixed Rate Trust Certificates, the amount so redeemed shall be allocated to all Fixed Rate Trust Certificates at the time outstanding in proportion to the unpaid principal amounts thereof, but only in units of \$1,000, and to the extent that such proportionate allocation shall not result in an even multiple of \$1,000, adjustment may be made by the Company to the end that successive allocations shall result in substantially proportionate payments. All such partial redemptions shall be applied first against the final maturities of all outstanding Fixed Rate Trust Certificates and then, against the annual installments required by Section 3.2 in the inverse order of the due dates of such annual installments.

Upon presentation of any Fixed Rate Trust Certificate which is redeemed in part only, the Trustee shall execute and register and deliver to the holder thereof, at the expense of the Company, a new Fixed Rate Trust Certificate or Fixed Rate Trust Certificates in an aggregate principal amount equal to the unredeemed portion of the Fixed Rate Trust Certificate so presented with the Guaranty of the Company endorsed thereon.

Notwithstanding the foregoing, the initial holders of the Fixed Rate Trust Certificates, but excluding their successors, assigns, or transfers, shall not be required to



present and surrender the Trust Certificates in the event of a redemption in part only, provided that any such initial holder provides prior to such redemption its written agreement to make notation of such redemption on the Trust Certificate or any Trust Certificate to be redeemed. If the Fixed Rate Trust Certificates are redeemed in full and upon written request of the Company to do so, the holders of the Fixed Rate Trust Certificates shall surrender the same to the Trustee within 60 days after the date of such request. Without limiting the foregoing, any such initial holder of the Fixed Rate Trust Certificates shall, in addition to complying with all other applicable requirements of Article Three and Article Four, make notation of all redemptions or prepayments thereon prior to any transfer, exchange or replacement of any such Fixed Rate Trust Certificates. Such holder shall also furnish to the Trustee and the Company such security and indemnity as may be required by the Trustee and by the Company in their discretion; provided however, that the written undertaking of such holder delivered to the Trustee and the Company shall be sufficient security and indemnity under this Section 4.4.

**SECTION 4.5. Certain Prepayments.** The Trustee, if the Company so requests, shall apply all or a portion of Replacement Funds as defined in Section 6.10 to the payment thereunder, at par, in a minimum principal amount of \$500,000 or larger multiples of \$100,000, of the Fixed Rate Trust Certificates together with accrued dividends to the date of prepayment. All such payments shall be applied pro rata among all holders of outstanding Fixed Rate Trust Certificates and in each case first against the final maturities of such holder's outstanding Fixed Rate Trust Certificates and then, against the annual installments required by Section 3.2 in the inverse order of the due dates of such annual installments.

Notice of payments pursuant to this Section 4.5 shall be delivered by the Company to the Trustee and the holders of the Fixed Rate Trust Certificates by mailing such notice of payment in the manner provided in Section 10.5 to the Trustee and each such holder at the last address of such holder as it appears in the register of Trust Certificates not less than 30 nor more than 60 days prior to the date fixed for payment.

## **ARTICLE FIVE**

### **ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH**

**SECTION 5.1. Acquisition of Equipment by Trustee.** The Company, as speedily as may be, shall cause to be constructed and shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto.

To that end, the Company hereby assigns to the Trustee all of its rights, title and interest under the contract or contracts entered into by the Company for the construction of such Equipment. Said Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to accept such delivery, and an Officer's Certificate as to such delivery and acceptance shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other equipment similar to the Equipment in addition to or in lieu of any units of the Equipment specifically described in Schedule A hereto (prior to the acceptance of such Equipment by the Trustee or its agent or agents), or in the event that any unit of the Equipment described in Schedule A hereto shall suffer a Casualty Occurrence as defined in Section 6.7, prior to such acceptance, the Company may cause to be sold to the Trustee other new locomotives or new standard-gauge railroad rolling stock (other than passenger equipment or work equipment) to be substituted under the trust, whereupon such other equipment shall become Equipment hereunder, and to that end the Company, upon entering into a contract or contracts for the construction of such other equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts.

**SECTION 5.2. Payments Out of Deposited Cash.** From time to time, when and as any Equipment shall have been delivered to and accepted by the Trustee or its agent pursuant to Section 5.1, the Trustee shall (subject to the provisions of Section 5.3) pay, upon Request, to the manufacturer or manufacturers or owner or owners of the delivered Trust Equipment out of Deposited Cash then held by the Trustee, together with such additional sums, if any, paid by the Company to the Trustee in Advance Rentals that are necessary to provide for payment in full of, the aggregate Cost of such Trust Equipment as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 5.3(a). The Company covenants that, contemporaneously with any such payment by the Trustee out of Deposited Cash, it will pay to the Trustee such necessary amounts, if any, of Advance Rentals.

**SECTION 5.3. Supporting Papers.** The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers or owner or owners and an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment was delivered to the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 6.6 hereof;

(b) A bill or bills of sale of such Trust Equipment from the manufacturer or manufacturers or owner or owners thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein);

(c) An Opinion of Counsel, satisfactory to the Trustee, that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances; and

(d) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 8.4 hereof.

Any Officer's Certificate pursuant to this Section 5.3 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

**SECTION 5.4. Ratio of Cost of Trust Equipment to Trust Certificates.** If the aggregate final Cost of the Trust Equipment shall be less than 100 percent of the aggregate principal amount of Trust Certificates issued hereunder, the Company will at its option either (a) cause to be purchased or constructed and transferred to the Trustee by supplement hereto, subject to all the terms of this Agreement, additional equipment of the type described in Section 5.1 in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 100 percent of the aggregate principal amount of Trust Certificates issued hereunder or (b) pay to the Trustee (in addition to all other amounts to be paid by it under the provisions of this Agreement) as additional rent such amount, if any, as shall, when added to:

(i) The aggregate final Cost of such of the Trust Equipment as shall have been transferred to the Trustee under this Agreement; and

(ii) Any net proceeds from the sale of Trust Certificates, together with any Advance Rental paid to the Trustee, held by the Trustee after payment of the aggregate final Cost of such Trust Equipment so transferred and delivered;

equal 100 percent of the aggregate principal amount of Trust Certificates issued hereunder.

**SECTION 5.5. Interest on Moneys Received by Trustee.** Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by Section 9.9 hereof shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder.

**SECTION 5.6. Application of Surplus Deposited Cash.** Any Deposited Cash remaining in the hands of the Trustee after the delivery of all the Trust Equipment to be delivered pursuant to Section 5.1 and Section 5.3 hereof and payment therefor in the manner provided herein shall, upon Request by the Company, be applied by the Trustee in the manner as described in this Article Five toward the purchase of additional Equipment included as Trust Equipment in accordance with Section 5.1 and Section 6.2 hereof or to the payment of Rentals under Section 6.4(B)(4) hereof.

## **ARTICLE SIX**

### **LEASE OF TRUST EQUIPMENT TO THE COMPANY**

**SECTION 6.1. Lease of Trust Equipment.** The Trustee does hereby let and lease all the Equipment to the Company, for a term of approximately 15 years ending on or before March 1, 2004.

**SECTION 6.2. Inclusion of Additional or Substituted Equipment.** In the event that the Company shall, as provided in Section 5.1 or Section 5.4(a) or in Section 6.7 and 6.10 hereof, cause to be purchased, constructed or manufactured and transferred to the Trust other equipment in addition to or in substitution for any of the Equipment herein specifically described, such other equipment shall be included as part of the Trust Equipment by supplement hereto executed by the Company and the Trustee and to be filed with the Interstate Commerce Commission and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

**SECTION 6.3. Equipment Subjected Hereto by Delivery.** As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, ipso facto and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

**SECTION 6.4. Rental Payments; Limitation on Tax Liability.** The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rents hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment and whether or not at the time any thereof shall have been delivered to the Company):

(A) The Company shall pay to the Trustee, as hereinafter provided, as Advance Rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 6.7 and 6.10 hereof) and the portion of such Cost to be provided out of the net proceeds of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee, the Company shall have paid or shall pay to the Trustee, as Advance Rental hereunder, a sum equal to the amount, if any, by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such Advance Rental as follows:

(1) At the time of issue of the Trust Certificates, a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates issued;

(2) Upon delivery of any of such Trust Equipment a sum equal to the portion of the Cost of such delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 5.2 hereof.

(B) In addition to such Advance Rental, the Company shall pay to the Trustee, as hereinafter provided, as Rental for the Trust Equipment and

whether or not at the time any thereof shall have been delivered to the Company, the following:

(1) (a) The necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(2) Any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust or of this Agreement, which the Trustee, as such, may be required to pay;

(3) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and, to the extent legally enforceable, interest at the Applicable Dividend Rate plus 1% from the due date upon the amount of any dividends which shall not have been paid when due until the same shall be paid in full; and

(4) The installments of principal of the Trust Certificates, and any applicable Make-Whole Premium Amount, in any such case as and when the same shall become payable, whether upon the date of maturity or otherwise under the provisions thereof or of this Agreement, and interest at the Applicable Dividend Rate plus 1% from the due date of any installment of principal or the due date of the Make-Whole Premium Amount, if any, which in any such case shall not have been paid when due until the same shall be paid in full.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of any government or taxing authority of the United States of America or of any state, county, municipality or other taxing authority to be paid on behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee (acting at the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates) the rights or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

**SECTION 6.5. Termination of Lease.** At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder or under the Fixed Rate Agreements or under the Company's guaranties endorsed on the Trust Certificates shall have been completed and fully made (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust

Equipment shall vest in the Company, and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon the public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; provided, however, that the Trustee, before being required to make any such repayment shall, at the expense of the Company, give notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of such notice, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company. In no event shall the holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

**SECTION 6.6. Marking of Trust Equipment; Permissible Markings.** The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously marked upon each side of such unit, by a metal plate or otherwise, the following words, in letters not less than one inch high:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT  
FILED WITH THE I.C.C. PURSUANT TO 49 U.S.C. 11303

Such marking shall be readily visible and shall indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any such marking shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded as provided in Section 8.4 hereof.

The Trust Equipment may be lettered "ATSF" or "SANTA FE", and may bear the circle and cross emblem of ATSF in any of its forms, and may be lettered with the name or initials of any railroad company which is permitted to use such equipment as hereinafter provided, or may be lettered in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein. The Trust Equipment may also be numbered for convenience of identification and bear identifying symbols and lettering of the Company. During the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a

claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

**SECTION 6.7. Maintenance of Trust Equipment; Casualty Occurrences.** The Company agrees that it will, at its own cost and expense, maintain and keep all of the Trust Equipment in good order and proper repair and at all times in compliance with any applicable standards set by the Federal Railroad Administration, the Association of American Railroads or the U.S. Department of Transportation (it being understood and agreed that any part or component added to any unit of Trust Agreement to meet any such applicable standards shall be deemed to be an accession to the Trust Equipment), unless and until it becomes worn out, lost, stolen, destroyed, irreparably damaged, or, at any time after March 1, 1999 is unsuitable for use, or shall be permanently requisitioned or taken over by any governmental authority under the power of eminent domain, or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the final maturity date of the Trust Certificates, being hereinafter called a "Casualty Occurrence"). Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall deliver to the Trustee an Officer's Certificate describing such unit and stating the then Casualty Value thereof and shall either (A) deposit with the Trustee an amount in cash equal to the Casualty Value of such unit; or (B) cause to be transferred to the Trustee additional new, used or remanufactured locomotives or other standard-gauge railroad rolling stock (other than passenger equipment or work equipment ("Replacement Units")), free from all liens and encumbrances, having a Cost at least equal to the then Casualty Value and remaining service life of the unit of Equipment having suffered the Casualty Occurrence and deliver to the Trustee, in respect of such Replacement Units, certificates, bills of sale and Opinions of Counsel, all in like manner as provided in Section 5.3 hereof, and in addition, an Officer's Certificate describing such Replacement Units and stating the Cost and the then Casualty Value thereof and cause Schedule A hereto to be supplemented and such supplement to be duly filed with the Interstate Commerce Commission all in accordance with applicable law. With respect to any Replacement Unit added to the Trust pursuant to this Section 6.7 and Section, 6.10, the Casualty Value of any such Replacement Unit added to the Trust shall be deemed to be the Casualty Value of the unit of Equipment having suffered the Casualty Occurrence. The rights and the remedies of the Trustee to enforce or to recover any of the Rental payments shall not be affected by reason of such Casualty Occurrences. Cash deposited with the Trustee pursuant to this Section 6.7 shall be held and applied as provided in Section 6.10.

**SECTION 6.8. Reports.** The Company covenants and agrees to furnish to the Trustee and each holder of Trust Certificates, whenever required by the Trustee or any such holder, and at least once in every calendar year, if so required, following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (a) the amount, description and numbers of all the Trust Equipment that may have become worn out, or that may have suffered a Casualty Occurrence since the date of the last preceding statement, (b) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement the plates or marks required by Section 6.6 hereof have been preserved, or that the same when repainted or repaired have been again plated or marked as required thereby, and (c) such other information as to the condition and state of repair of the Trust Equipment as the Trustee or any holder of the Trust Certificates may reasonably request. Any institutional holder of the Trust Certificates

and the Trustee, upon at least ten business days prior written notice to the Company, by its respective agent and at its sole cost, expense and risk, shall have the right, but shall be under no duty, to inspect the Trust Equipment, at the then existing locations thereof; provided that unless and until an Event of Default hereunder shall have occurred and be continuing, the holders of the Trust Certificates and the Trustee may not so inspect the Trust Equipment more than once in the aggregate in any calendar year.

**SECTION 6.9. Possession of Trust Equipment; Assignments.** The Company, so long as an Event of Default shall not exist and be continuing hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company, and the use thereof, whether under lease or otherwise, upon the lines of railroad owned or operated by ATSF (either alone or jointly with another) or by any Affiliate of the Company (either jointly or with another), or upon lines over which the Company or any such Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other carriers in the usual interchange of traffic with the Company and upon connecting and other carriers over which through service may from time to time be afforded to the Company, but only upon and subject to all the terms and conditions of this Agreement.

The Company shall not, without first obtaining the written consent of the Trustee, acting at the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates (which consent and direction shall not be unreasonably withheld if the Trustee's lien on the Trust Equipment is and shall continue to be adequately secured), assign or transfer its rights hereunder, or sublet the Trust Equipment or any part thereof, except in any such case to either an Affiliate of the Company or to a permitted assignee or sublessee as hereinafter provided, in any which case such assignment, transfer or sublease shall be for use of the Trust Equipment predominately within the United States and shall be expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of the Trustee hereunder; and the Company shall not, without such written consent, except as provided in the first paragraph of this Section 6.9, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; provided, however, that the Company, so long as it shall not be in default under the terms of this Agreement, shall be entitled, without first obtaining the written consent of the Trustee, to sublet the Trust Equipment or any part thereof to another Class I railroad company and, with the prior written consent of the Trustee, acting at the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates (which consent and direction shall not be unreasonably withheld if the Trustee's lien on the Trust Equipment is and shall continue to be adequately secured), to sublet the Trust Equipment or any part thereof to any other corporation, in any such case under a sublease for use of the Trust Equipment predominately within the United States. Any sublease shall expressly provide (a) that the rights of the sublessee in and to such Trust Equipment shall be subject and subordinate to the rights of the Trustee in and to such Trust Equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder, and (b) that such Trust Equipment may be lettered or marked for the convenience of identification of the leasehold interest of the sublessee therein only in accordance with the provisions of Section 6.6 hereof. Anything contained in this Agreement, including without limitation this Section 6.9, to the contrary notwithstanding, the Company may not without prior written permission of the Trustee, acting at the written direction of the holders of at least 51% of the outstanding principal amount of Trust Certificates (which permission shall not be unreasonably withheld if the Trustee's lien on the Trust Equipment is and shall continue to be adequately secured), assign, transfer or sublease more than 5% at any one time of the Trust Equipment for use predominately outside of the United States



and notwithstanding any transfer, assignment or sublease as contemplated herein, the Company shall remain liable as a principal and not as a guarantor or surety for the performance of its obligations under this Agreement and the Fixed Rate Agreements and in respect of the guaranties on the Trust Certificates. For purposes of this section, use predominately outside of the United States shall mean such use for more than 3 months in any calendar year. The Company shall deliver to the Trustee a copy of any sublease promptly after its execution. In each instance where the Trustee is to act at the written direction of the holders under this paragraph, the Trustee shall advise the holders by written notice specifying in detail the matter for which the Trustee's action or consent is requested by the Company. Unless a holder objects in writing to the Trustee within 45 days of the giving of said notice (which writing shall specify the grounds for such objection), the holder shall be deemed to have directed the Trustee by written direction to approve the action or consent so requested by the Company.

The Company will not merge, consolidate, or sell, assign or transfer all or substantially all of its property to any other corporation unless the survivor is the Company or the survivor of such merger or consolidation or such transferee shall be a corporation organized under the laws of the United States of America or a state thereof and shall expressly assume in writing all the obligations and liabilities under the Agreement and as guarantor of the Trust Certificates and no Event of Default shall exist under the Agreement; provided that if in connection within any such merger, consolidation, sale, assignment or transfer any of the conditions herein above set forth cannot be satisfied, then and in such event the Company may redeem all, but not less than all, of the Trust Certificates upon the terms and conditions provided in Section 4.1. Upon satisfaction of these conditions, and only these conditions, any merger, consolidation or sale of assets shall be permitted and there will be no requirement that the Trust Certificates be prepaid, provided, however, an assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant.

In the event that prior to the expiration of the term of this Agreement, the use of any unit of Trust Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before the final maturity of the Trust Certificates, the Company's duty to pay Rentals in respect thereof and to perform all of its obligations hereunder and under the Fixed Rate Agreements and the guaranties endorsed on the Trust Certificates shall continue for the duration of such requisitioning or taking. The Company shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

**SECTION 6.10. Release and Replacement of Trust Equipment.** Any units of the Trust Equipment which shall have been the subject of a Casualty Occurrence may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company the Trustee will release any such units of the Trust Equipment upon the satisfaction of the terms and conditions of Section 6.7 and this Section 6.10 with respect to such units. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such Casualty Value of such Trust Equipment or caused to be transferred to this Trust Replacement Units as provided for in Section 6.7.

Any money paid to the Trustee pursuant to this Section 6.10 or Section 6.7 hereof (the "Replacement Funds") shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Company shall direct by a Request filed with the Trustee, either to or toward the Cost of one or more Replacement Units (to replace the unit or units of Trust Equipment which has or have been the subject of a Casualty Occurrence) or to the prepayment of the Trust Certificates pursuant to Section 4.5. Anything herein contained to the contrary notwithstanding, the deposit of Replacement Funds with the Trustee pursuant hereto shall not be deemed or construed to relieve the Company of its obligations with respect to the payment in full of installments of principal, the Make-Whole Premium Amount, if any, and dividends and interest on overdue payments of principal, premium, if any, and dividends at the Applicable Dividend Rate plus 1% or in respect of its obligations under the guaranties endorsed on the Trust Certificates.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to Section 6.7 or Section 6.10 shall be invested, pending its application as hereinabove provided, in Investments as provided in Section 9.9 hereof.

The Company will cause any Replacement Units to be marked as provided in Section 6.6. Any and all such Replacement Units shall constitute accessions to the Trust Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Trust Equipment delivered hereunder and shall be included in the term "Trust Equipment" as used in this Agreement. Title to all such Replacement Units shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Trustee subject to the provisions hereof, and the Company shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act of an appropriate supplemental agreement describing such Replacement Units) and do, or cause to be done, any and all such acts as may be necessary to cause such Replacement Units to come under and be subject to this Agreement and to protect the title of the Trustee to such Replacement Units. Unencumbered title to all such Replacement Units shall be warranted in like manner as the units of Trust Equipment replaced.

Whenever the Company shall file with the Trustee, pursuant to the provisions of this Section 6.10, a Request to apply Replacement Funds to or toward the Cost of a Replacement Unit or Units of Equipment, the Company shall file therewith in such number of counterparts as may reasonably be requested:

(a) an Officer's Certificate certifying (1) that such Replacement Unit or Units is or are Trust Equipment as defined herein and has or have been marked as required by the provisions of this Section 6.10, (2) the aggregate Cost of such Replacement Unit or Units (3) that the Casualty Value of such Replacement Unit or Units is or are at least equal to the Casualty Value of the unit of Trust Equipment which has been the subject of the related Casualty Occurrence and (4) that the remaining service life of each such Replacement Unit or Units is individually at least equal to the remaining service life of such unit of Trust Equipment; and

(b) an Opinion of Counsel for the Company (which may be counsel for the Company) (1) that title to such Replacement Unit or Units is vested in the Trustee free and clear of all liens and encumbrances and that such

Replacement Unit or Units has or have come under and become subject to this Agreement and (2) that a Supplement to this Agreement has been duly filed with the Interstate Commerce Commission in accordance with Section 11303 Interstate Commerce Act.

If an Event of Default shall have occurred and be continuing, all money then held by the Trustee pursuant to this Section 6.10 shall be applied by the Trustee as if such money were money received upon the sale of Equipment pursuant to Section 7.3.

In order to facilitate the sale, or other disposition of any unit of Trust Equipment suffering a Casualty Occurrence or no longer being suitable for use, the Trustee shall upon Request, after deposit by the Company of the required amount, execute and deliver to the Company's vendee, assignee or nominee, a bill of sale (without warranties) for such unit, and such other documents as may be required to release such unit from the terms and scope of this Agreement, in such form as may be reasonably requested by the Company.

**SECTION 6.11. Indemnification by the Company.** The Company covenants and agrees to indemnify the Trustee and each holder of the Trust Certificates against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. The indemnification obligations of the Company under this Section 6.11 shall survive the termination of this Agreement and the payment in full of the Trust Certificates.

**SECTION 6.12 Insurance.** The Company will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are customary under the Company's risk management programs and in keeping with risks assumed by corporations of established size and reputation engaged in substantially the same businesses and similarly situated: (a) public liability insurance (including Federal Employer Liability Act coverage) against loss or damage for personal injury, death or property damage suffered upon, in or about any premises occupied by it or occurring as a result of the ownership, maintenance or operation by it of any automobile, truck or other vehicle or services rendered by it; and (b) all risk property insurance on the Trust Equipment; provided, however, that the Company may self-insure with respect to any or all of the above as is customary under the Company's risk management programs and in keeping with the risks assumed by

corporations of established reputation engaged in substantially the same businesses and similarly situated; and provided further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by the Company. In the event of any insured property loss, the payment for such loss shall be made directly to the Company.

## **ARTICLE SEVEN**

### **REMEDIES IN EVENT OF DEFAULT**

**SECTION 7.1. Events of Default.** The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the Rental (including Advance Rental) payable hereunder for more than 10 days after the same shall have become due and payable; or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or permit any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee or any holder of the Trust Certificates shall have demanded in writing to the Company such cancellation and recovery of possession or within said 30 day period to deposit with the Trustee a sum in cash equal to the Casualty Value of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment); or

(c) the Company shall, for more than 30 days after the Trustee or any holder of the Trust Certificates shall have demanded in writing addressed to the Company performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee, as the case may be, for such compliance; or

(d) the lease provided for herein shall be terminated by operation of law; or

(e) the guaranty of the Company in respect of any Trust Certificate shall cease to be in full force and effect for any reason whatsoever, including, without limitation, a final determination by any governmental body or court which is not subject to further administrative or judicial appeal that such guaranty is invalid, void or unenforceable or the Company shall contest or deny in writing the validity or enforceability of its obligations under any such guaranty; or

(f) any material representation, warranty, certificate or financial statement made or furnished in connection with the sale of the Fixed Rate Trust Certificates is shown to have been materially inaccurate, as of the date when made, with respect to the financial condition or operations of Company and its consolidated subsidiaries taken as a whole.

(g) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, or under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 60 days (or such longer period not to exceed 120 days as may be agreed to in writing by the holders of at least 51% in principal amount of the then outstanding Trust Certificates) from the filing of such petition (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and the obligations of the Company under the Company's guaranties endorsed on the Trust Certificates shall not have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days (or such longer period not to exceed 120 days as may be agreed to in writing by the holders of at least 51% in principal amount of the then outstanding Trust Certificates) after such appointment, if any, or 60 days (or such longer period not to exceed 120 days as may be agreed to in writing by the holders of at least 51% in principal amount of the then outstanding Trust Certificates) after commencement of the case shall have been filed, whichever shall be earlier, or within 60 days by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision, as the same may hereafter be amended; or

(h) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 120 days from the commencement of such proceedings (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under the guarantees endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 120 days after such appointment, if any, or 120 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates in the case of any Event of Default pursuant to Section 7.1(a), and upon written request of the holders of at least 51% in principal amount of the then outstanding Trust Certificates in the case of all other Events of Default, shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the Rentals (including any unpaid Advance Rental, but not including Rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 6.4 hereof and not theretofore paid. Thereupon the entire amount of such Rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Applicable Dividend Rate plus 1%, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, and to collect such judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall happen, the Trustee in its discretion may, and in case of default in payment of principal and interest, upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and upon written request of the holders of not less than 51% in principal in case of all other Events of Default, shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall forthwith become and shall be due and payable without further demand, together with interest at the Applicable Dividend Rate plus 1%, to the extent legally enforceable, on any portion thereof overdue.

In case the Company shall fail to pay, or cause to be paid, any installment of Rental payable pursuant to Section 6.4B(3) or B(4) hereof when and as the same shall have become due and payable hereunder and such default shall have continued for a period of 10 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the Rentals and other sums so due and unpaid and/or for the payment of sums due and owing pursuant to the guaranties endorsed on the Trust Certificates and the recovery of reasonable costs of collection, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or other obligor upon the Trust Certificates under Title 11 of the United States Code or any other Federal or state law relating to bankruptcy or insolvency, or in case a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization shall have been appointed for the Company or for such other obligor or for its property, or in the case of any other judicial proceedings relative to the winding up or liquidation of the affairs of the Company or for such other obligor, the Trustee, irrespective of whether the Rental or Advance Rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 7.1, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the Rentals

(including any unpaid Advance Rental, but not including Rentals required for the payment of dividends accruing after the date of payment of the accelerated Rentals, if any), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement.

All rights of action and rights to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

**SECTION 7.2. Remedies.** In case of the happening of any Event of Default, the Trustee shall have and may exercise all rights of a secured party in Article 9 of the Uniform Commercial Code of any applicable jurisdiction and may by its agents enter upon the railroads and premises of the Company and of any sublessee or user of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of Rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of Rentals payable by the Company as provided in Section 7.1 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of the then outstanding Trust Certificates hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by

the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of Rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 6.4 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured.

**SECTION 7.3. Application of Proceeds.** If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 7.1 and 7.2 hereof, all payments made by or for the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, (b) of the dividends then due, with interest on overdue dividends at the Applicable Dividend Rate plus 1% to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and, if not sufficient, then pro rata on all Trust Certificates, applied first to dividends and interest and second to principal, (c) all other charges, expenses, advances or sums due and owing from the Company in accordance with the provisions of this Agreement, the Fixed Rate Agreements or the guaranties endorsed on the Trust Certificates, and (d) the remainder thereof to the Company.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

**SECTION 7.4. Waiver of Default.** If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of Rentals shall have been declared and become due and payable, all as in Section 7.1 hereof provided, but before March 1, 2004, all arrears of Rentals and Advance Rentals (with interest upon any overdue Rental installments at the Applicable Dividend Rate plus 1% on the respective portions of such Rental installments allocable to the outstanding Trust Certificates and any overdue Advance Rentals), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder or under the Fixed Rate Agreements or in respect of the guaranties endorsed on the Trust Certificates (other than the principal of Trust



Certificates and any other Rental installments which shall not at the time have matured according to their terms) shall be paid by or for the Company before any sale or lease by the Trustee or any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof and thereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so directed in writing by the holders of at least 51% of the then outstanding principal amount of the Trust Certificates which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

**SECTION 7.5. Obligations Not Affected by Remedies.** No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or in respect of the guaranties endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of, premium, if any, and dividends on the Trust Certificates.

**SECTION 7.6. Delivery of Trust Equipment to Trustee.** In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate of the Company for the delivery of the Trust Equipment to it, the Company shall at its own expense forthwith and in the usual manner cause the Trust Equipment to be moved to such point or points on such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate of the Company until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, or cause to be furnished, without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. The Company agrees to maintain and keep the Trust Equipment in good order and proper repair all as provided in Section 6.7 hereof after possession of the Trust Agreement has been demanded by the Trustee until such Trust Equipment has been delivered to the Trustee for disposition. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

**SECTION 7.7. Trustee to Give Notice of Default.** The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder actually known to a responsible officer of the Corporate Trust Department of the Trustee immediately upon such officer so learning of the same.

**SECTION 7.8. Control by Holders of Trust Certificates.** The holders of not less than 51% in aggregate unpaid principal amount of the then outstanding Trust Certificates, by written direction executed and delivered to the Trustee, shall have the

right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising or refraining from exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction (a) if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken or (b) if the Trustee shall be advised by counsel that the action so directed may involve it in personal liability unless it shall have received a satisfactory indemnity therefor. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with any such direction given hereunder.

**SECTION 7.9. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest.** Notwithstanding any other provision in this Agreement, the right (which, it is understood, shall exist) of any holder of any Trust Certificate to receive payment of the principal of, Make-Whole Premium Amount, if any, and dividends and interest on, such Trust Certificate on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment or the guaranty thereof by the Company on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof for the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

**SECTION 7.10. Remedies to be Cumulative.** The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## **ARTICLE EIGHT**

### **ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY AND ATSF**

**SECTION 8.1. Company to Make Payments Provided For.** The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the Rentals (including Advance Rentals) and of the other amounts provided for herein and of the other amounts provided for herein, including but not limited to any Make-Whole Premium Amount.

**SECTION 8.2. Guaranty to Holders of Trust Certificates.** The Company absolutely and unconditionally covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount of such Trust Certificates thereof, all dividends and any applicable Make-Whole Premium Amount, in any such case in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon at the Applicable Dividend Rate plus 1% to the extent legally enforceable) and shall receive dividends thereon in like money at the rate specified therein from the date specified therein to the date of maturity or earlier redemption, if any, of such Trust Certificate, at the times and place and otherwise as

expressed in the Trust Certificates (and, if not so paid, with interest thereon at the Applicable Dividend Rate plus 1% to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof, Make-Whole Premium Amount, if any, and of the dividends thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual signature of one of its authorized officers. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

**SECTION 8.3. Discharge of Liens.** (a) The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold and residual interests of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless such contest will in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and not delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

(b) All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to the Trustee with respect to the amount of any local, state, provincial or federal Canadian or United States or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes imposed on the Trustee in connection with the execution of its duties under this Agreement), assessments or license fees ( and any charges, fines or penalties in connection therewith) (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Company agrees to cause to be paid on demand in addition to the payments to be made by it provided herein. The Company will also cause to be paid promptly all Impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof by the Company or upon the earnings arising therefrom or upon the Trustee solely by reason of its interest therein, and any and all Impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby, and will cause to be kept at all times all and every part of such unit free and clear of all Impositions which might in any way affect the interest of the trustee or result in a lien, claim or encumbrance upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to be Trustee; provided, however, that the Company shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the

non-payment thereof does not materially adversely affect the property or rights of the Trustee or the holders of the Trust Certificate hereunder. If any Impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; provided, however, that the Company shall not be obligated to reimburse the Trustee for any Impositions so paid unless the Trustee shall have been in the opinion of its counsel legally liable with respect thereto, or unless the Company shall have approved the payment thereof.

In the event any reports with respect to Impositions are required to be made on the basis of individual units of the Trust Equipment, the Company will make or cause to be made such reports in such manner as to show the interest of the Trustee in such units or will notify the Trustee of such requirement and will make or cause to be made such reports in such manner as shall be satisfactory to the Trustee.

In the event that, during the continuance of this Agreement, the Company becomes liable for the payment or reimbursement of any Impositions, pursuant to this Section 8.3(b), such liability shall continue, notwithstanding the expiration of the term of this Agreement, until all such Impositions are paid or reimbursed by the Company.

**SECTION 8.4. Payment of Expenses; Filing and Recording.** The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment and in connection with any amendments, waivers or consents pursuant to the provisions hereof, including without limitation any amendment, waiver or consent resulting from any work-out, restructuring or similar proceeding relating to the performance by the Company of its obligations under this Agreement, the Fixed Rate Agreements or pursuant to the guaranties endorsed on the Trust Certificates. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303, or any successor provision thereto. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

**SECTION 8.5. Further Assurances.** The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

**SECTION 8.6. Payment Notwithstanding Acquisition of Trust Certificates by Company.** The Company covenants that it will make payment of the Rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates shall have been acquired by the Company or any of its Affiliates or shall not have been presented for payment.

## **ARTICLE NINE**

### **THE TRUSTEE**

**SECTION 9.1. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

**SECTION 9.2. Duties and Responsibilities of the Trustee.** In the case an Event of Default has occurred and is continuing which has not been cured or waived in writing and of which the Trustee has knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which have occurred, the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provision of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement; and

(d) the Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

**SECTION 9.3. Application of Rentals.** The Trustee covenants and agrees to apply and distribute the Rentals received by it under Section 6.4 hereof (other than sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) hereof) when and as the same shall be received, and to the extent that such Rentals shall be sufficient therefor, for the purposes specified in said Section 6.4(B).

**SECTION 9.4. Duties in Respect of the Trust Certificates.** The Trustee

shall cause to be kept at its Principal Office, books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

**SECTION 9.5. Insuring or Taking Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents.** The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of the Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Section 5.3 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

**SECTION 9.6. No Obligation to Enforce Trust Unless Requested and Indemnified.** The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested in writing by the holders of not less than 51% (except as may be otherwise provided herein) in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto.

**SECTION 9.7. Limitations on Actions by Holders of Trust Certificates.** No holder of any Trust Certificate shall have any right to institute any suit, action or proceeding for the execution and enforcement of the trust hereby created unless, after the aforesaid request in writing by the holders of not less than 51% (except as may be otherwise provided herein) in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfactory to it shall have been provided, and after 10 days shall have elapsed after receipt by the Trustee of such request, it shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 9.7 nor the provisions of Section 9.6 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

**SECTION 9.8. Assumption of No Default; Reliance on Notices and Other Documents.** The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 25% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default or Event of Default desired to be brought to the attention of the Trustee. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

**SECTION 9.9. Money Held by Trustees; Authorized Investments.** Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Chicago banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, as requested by the Company, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Investments, at such prices, including any premium and accrued interest, as requested by the Company, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, as requested by the Company, or the Trustee may, in the event funds are required for payment against delivery of Equipment or in the event funds are required for any redemption or prepayment pursuant to Article 4, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment, including accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of Rentals received by it for that purpose under the provisions of Section 6.4(B)(1)(b) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof, shall be entitled to receive any profit which may be realized from any sale or redemption of Investments.

**SECTION 9.10. No Liability for Trust Equipment; Miscellaneous Matters.** The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturer or manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and willful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

The Company agrees to indemnify the Trustee for, and to hold harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the one being so indemnified, arising out of or in connection with the acceptance or administration of the trust hereby created or the authentication and delivery of any Trust Certificates issued hereunder, as the case may be, including the costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

**SECTION 9.11. Reports.** The Trustee shall, at least once in each year, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may reasonably require, and the Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

**SECTION 9.12. Resignation by Trustee; Appointment of Successor Trustee.** If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company and the holders of the Trust Certificates in writing not less than 60 days prior to the effective date of such termination and the Trustee or any successor to it in the trust hereby created may be removed by the holders of at least a majority in principal amount of the then outstanding Trust Certificates by written notice delivered to the Trustee and to the Company, and in any such case, the Company shall within 10 business days thereafter designate in writing to the Trustee and the holders of the Trust Certificates a bank, a trust company or other comparable financial institution, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investments held by the Trustee hereunder in which any of said moneys may then be invested and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the party of the first part. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within 10 business days from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee. The foregoing provisions are, however, subject to the right of the holders of at least a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made



within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a bank, trust company or comparable financial institution organized under, or having a branch duly qualified to conduct business as a bank, trust company or financial institution under, the laws of the United States of America or any of the states thereof and having a capital and surplus aggregating at least the equivalent of U.S. \$100,000,000, if there be such bank, trust company or comparable financial institution willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

**SECTION 9.13. Merger, Conversion or Consolidation of Trustee.** Any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation shall be a bank, trust company or other comparable financial institution organized under, or having a branch duly qualified to conduct business as a bank, trust company or financial institution under, the laws of the United States of America or any of the states thereof, and shall have a capital and surplus aggregating at least the equivalent of U.S. \$100,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 9.14. Trustee's Liens.** The Trustee covenants and agrees, for the benefit of the Company and the holders from time to time of the Trust Certificates, to keep the Trust Equipment free and clear at all times of any Trustee's lien, claim or encumbrance.

**SECTION 9.15. Trust Certificates Owned by Company Deemed Not Outstanding.** In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by any Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

## **ARTICLE TEN**

### **MISCELLANEOUS**

**SECTION 10.1. Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.** Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an

instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority.

(b) The ownership of Trust Certificates shall be determined by the registry books to be kept as provided in Section 9.4 hereof.

**SECTION 10.2. Limitation of Rights.** Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

**SECTION 10.3. Binding Upon Successors and Assigns.** Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, including any subsequent holders of the Trust Certificates.

**SECTION 10.4. Amendments, Waiver and Termination.** Any provision of this Agreement or the Trust Certificates may be amended or waived as provided in a written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates with the consent of the Company and the Trustee, copies of which shall have been delivered by the Company to any holder of the Trust Certificates who did not execute such written direction, provided, however, that without the consent of each holder of the Trust Certificates, no such amendment or waiver shall (a) change the amount of principal, change the amount or dates of payment of installments of principal, change the rate or change the time of payment of interest with respect to the Trust Certificates, or effect the time or amount of any required redemption or prepayment of principal thereof, (b) change the amount of or change the time of payment of any Rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, (c) change the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver, (d) release any Trust Equipment from this Agreement which has been accepted and settled for under Article 5, otherwise than as specifically contemplated by the provisions hereof, or (e) modify any of the provisions of this Section 10.4. In the event the Company desires to propose an amendment or waiver

which, in the reasonable judgment of the Company and the Trustee, shall not be materially adverse to any holder of a Trust Certificate, then the Trustee may give each holder written notice thereof, which notice shall specify in detail any such proposed amendment or waiver and state clearly that such amendment is not in the judgment of the Trustee, materially adverse to any holder of a Trust Certificate and is proposed to become effective 45 days after the giving of such notice unless any holder gives written notice to the Trustee of its objection to such proposed amendment or waiver within the 45-day period following such notice from the Trustee. Such amendment or waiver shall become effective only at the expiration of such 45-day period. If such proposed amendment or waiver is objected to in writing (which writing shall specify the grounds for such objection) at or prior to the end of such 45-day period by any holder of a Trust Certificate, it shall not become effective except upon the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates as aforesaid. Except as the context otherwise requires, the term "Agreement" means this Agreement as supplemented pursuant to this Section 10.4.

**SECTION 10.5. Notices.** All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by prepaid courier to (a) in the case of the Company, at its office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of a holder, at the address shown upon the books for the registration of the Trust Certificates maintained at the Trustee's Principal Office, and (c) in the case of the Trustee, at its office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the receipt of the prepaid courier attached, shall be conclusive evidence of the giving of such demand, notice or communication.

**SECTION 10.6. Counterparts.** This Agreement has been simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**SECTION 10.7. Date of Execution.** This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee. This Agreement shall be effective as of the date and year first above written.

**SECTION 10.8. Effect of Headings.** The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 10.9. Illinois Law to Govern.** The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

**SECTION 10.10. Legal Holidays.** In any case where the date of any dividend payment or date of payment of any required installment of principal or date of redemption or prepayment in whole or in part of the Trust Certificates or date of payment of premium, if any, or the maturity date of any Trust Certificates or the date of any notice required by the Agreement is, at the place where payment is to be made or notice is to be given (or, in the event of wire transfers requested pursuant to Section 3.2, the place to which such wire transfers are to be made), a legal holiday or a day on which banking

institutions are authorized by law to close, then payment of the dividends, principal amount or premium, if any, as the case may be, may be made on the next succeeding day which is not a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends or interest shall accrue for the period after such nominal date.


**SECTION 10.11. Severability.** Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts or portion which may, for any reason, be hereafter declared invalid.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed on the eighteenth date of July, 1989.

HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By   
Vice President

ATTEST:

  
Assistant Secretary

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY

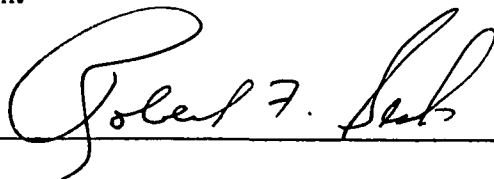
By \_\_\_\_\_  
Senior Vice President - Finance  
and Chief Financial Officer

ATTEST:

\_\_\_\_\_  
Assistant Secretary

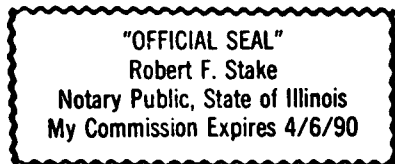
STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF C O O K     )

On this 18<sup>TH</sup> day of JULY, 1989, before me personally appeared R. G. MASON, to me personally known, who, being by me duly sworn, says that he is Vice President of Harris Trust and Savings Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_

My Commission expires on \_\_\_\_\_

[NOTARIAL SEAL]



STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF C O O K     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me personally appeared Glenn W. Rodel, to me personally known, who, being by me duly sworn, says that he is Senior Vice President-Finance and Chief Financial Officer of The Atchison, Topeka and Santa Fe Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_

My Commission expires on \_\_\_\_\_

[NOTARIAL SEAL]

**EQUIPMENT TRUST, SERIES U**  
Dated March 1, 1989

**SCHEDULE A**

| <u>No. of<br/>Units</u> | <u>Description</u>   | <u>Estimated Costs</u> |                     |
|-------------------------|--|------------------------|---------------------|
|                         |  | <u>Per Unit</u>        | <u>Total</u>        |
| 10                      | GP60, 3800 H.P., four axle, diesel-electric locomotives (including event recorders); General Motors Corporation (Electro-Motive Division), builder. Nos. 4020, 4022, 4024, 4026, 4028, 4030, 4032, 4034, 4036, 4038. | \$1,253,205            | \$12,532,050        |
| 10                      | GP60, 3800 H.P., four axle, diesel-electric locomotives; General Motors Corporation (Electro-Motive Division), builder. Nos. 4021, 4023, 4025, 4027, 4029, 4031, 4033, 4035, 4037, 4039.                             | 1,258,055              | 12,580,550          |
| 10                      | Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders; General Electric Company, builder. Nos. 7430, 7432, 7434, 7436, 7438, 7440, 7442, 7444, 7446, 7448.                        | 1,238,329              | 12,383,290          |
| 10                      | Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives; General Electric Company, builder. Nos. 7431, 7433, 7435, 7437, 7439, 7441, 7443, 7445, 7447, 7449.   | <u>1,231,489</u>       | <u>12,314,890</u>   |
| 40                      | TOTAL UNITS  |                        | <u>\$49,810,780</u> |



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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
EQUIPMENT TRUST SERIES U

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SECOND AMENDED AND RESTATED  
EQUIPMENT TRUST AGREEMENT  
Dated as of March 1, 1989

Between

HARRIS TRUST AND SAVINGS BANK,  
as Trustee,

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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### SCHEDULE A

## **SECOND AMENDMENT AND RESTATED EQUIPMENT TRUST AGREEMENT**

This Second Amended and Restated Equipment Trust Agreement, dated as of March 1, 1989 (the or this "Agreement"), by and between HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, as Trustee, (hereinafter called the Trustee) and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, (hereinafter called the Company),

### **WITNESSETH:**

WHEREAS, words and phrases not otherwise defined herein shall have the meanings assigned thereto in Article Two of this Agreement; and

WHEREAS, the Company has contracted, or will contract for, the construction and the transfer to the Trustee of the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, The Atchison, Topeka and Santa Fe Railway Company Equipment Trust Certificates, Series U (hereinafter called Trust Certificates), are to be issued and sold in one or more installments having an aggregate principal amount of not exceeding \$50,880,000 (the "Total Authorized Issue"), and the net proceeds of such sale, together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided, will constitute a fund to be equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as The Atchison, Topeka and Santa Fe Railway Company Equipment Trust, Series U, and to be applied by the Trustee from time to time in all or part payment of the Cost of the Trust Equipment, the remainder, if any, of the Cost thereof to be paid out of Advance Rentals to be paid by the Company as provided herein; and

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the forms hereinafter set forth; and

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof, premium, if any, and dividends and interest thereon as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

### **ARTICLE ONE**

#### **FORMS OF TRUST CERTIFICATES AND GUARANTY**

**SECTION 1.1. Forms of Trust Certificates and Guaranty.** The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms:

[Form of Fixed Rate Trust Certificate]

PURSUANT TO THE EQUIPMENT TRUST AGREEMENT,  
THE EQUIPMENT TRUST CERTIFICATES ARE BEING  
ISSUED TO FINANCE NOT EXCEEDING 100%  
OF THE COST OF THE TRUST EQUIPMENT

No. UR \_\_\_\_\_

\$ \_\_\_\_\_

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Equipment Trust Certificates, Series U

Total Authorized Issue: \$50,880,000

9.26% Trust Certificate  
due March 1, 2004

HARRIS TRUST AND SAVINGS BANK, Trustee

Dividends Payable Semiannually

THE HARRIS TRUST AND SAVINGS BANK, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement, dated as of March 1, 1989, as amended and restated ("Agreement"), by and between the Trustee and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Company"), hereby certifies that

or registered \_\_\_\_\_ assigns, is entitled to an interest in the principal amount of \_\_\_\_\_ Dollars in THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EQUIPMENT TRUST, SERIES U, payable at its principal office in the City of Chicago, State of Illinois in fifteen equal annual installments of principal on each March 1 from and including March 1, 1990 to and including the final due date stated above without the need for presentation and surrender of this Trust Certificate to the undersigned and to payment of dividends on said principal amount semiannually on March 1 and September 1 of each year, beginning as of September 1, 1989, at the rate per annum specified in the heading hereof from and including the date hereof, until said maturity date, at said office of the undersigned, with interest at said dividend rate plus 1% on any unpaid principal, premium, if any, and dividends to the extent that it shall be legally enforceable, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts but payable only from and out of Rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Agreement. Notwithstanding the provisions of the preceding sentence, in the case of payments of principal, premium, if any, and dividends on this Trust Certificate, the undersigned, upon request of the registered holder hereof, will, subject to timely receipt of Rental payments under the Agreement, mail its check to such registered holder at his address shown on the registry books maintained by the undersigned, or, upon the request of the holder for wire transfer, will wire immediately available funds to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee prior to the date that payment is due. Upon payment in

full of the principal, premium, if any, and dividends on this Trust Certificate and upon written request of the Trustee or the Company to do so, the registered holder hereof shall surrender this Trust Certificate to the Trustee.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or, in lieu thereof, as provided in the Agreement, cash or obligations defined in the Agreement as "Investments") is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the undersigned at its principal office in the City of Chicago, State of Illinois) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Trust Certificate, assents.

The Trust Certificates are issuable in denominations of \$1,000 and any larger integral multiple of \$1,000, as fully registered Trust Certificates, and the several denominations of Trust Certificates are interchangeable upon presentation thereof at the principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

Subject to the provisions of Section 3.5 of the Agreement, this Trust Certificate is transferable by the registered holder hereof, in person or by duly authorized attorney, on the books of the undersigned upon surrender hereof to the undersigned at its said office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new Trust Certificate or Certificates of the same maturity and rate and in authorized form and denominations will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer, the undersigned and the Company shall be entitled to deem and treat the registered holder hereof as the absolute owner for the purpose of receiving payment of principal, premium, if any, and dividends and for all other purposes and shall not be affected by any notice to the contrary.

The Trust Certificates are not subject to redemption in whole or in part except as may be expressly permitted by the terms of the Agreement. The Trust Certificates may be redeemed upon at least thirty days, but not more than sixty days', notice at the option of the Company, as a whole or in part, at any time or times on or after March 1, 1996 at par together with the applicable Make-Whole Premium Amount (as defined in the Agreement) and accrued interest at the Applicable Dividend Rate (as defined in the Agreement) to the date fixed for redemption.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount and dividends accrued thereon represented by this Certificate may be declared due and payable, as provided in the Agreement.

This Certificate shall not be deemed a promise to pay of the Trustee and shall not be valid unless manually signed by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the signature of one of its Vice Presidents and its corporate seal to be hereunto affixed and to be attested by an Assistant Secretary.

Dated as of

HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

[Form of Guaranty]

GUARANTY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, for a valuable consideration, hereby absolutely and unconditionally guarantees to the registered holder of the within Trust Certificate the prompt payments of the principal of said Certificate, Make-Whole Premium Amount, if any, and of dividends thereon at the rate specified in said Certificate, with interest at said dividend rate plus 1% on any unpaid principal, unpaid Make-Whole Premium Amount, if any, and (to the extent that it shall be legally enforceable) interest on any unpaid dividends from and after the due date thereof until such principal, Make-Whole Premium Amount, if any, and dividends shall be paid, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
Senior Vice President-Finance and Chief  
Financial Officer



[Form of Period Rate Trust Certificate]

PURSUANT TO THE EQUIPMENT TRUST AGREEMENT,  
THE EQUIPMENT TRUST CERTIFICATES ARE BEING  
ISSUED TO FINANCE NOT EXCEEDING 100%  
OF THE COST OF THE TRUST EQUIPMENT

No. UR-\_\_\_\_\_

\$ \_\_\_\_\_

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Equipment Trust Certificates, Series U

\_\_\_\_\_ Installment

Total Authorized Issue: \$50,880,000

Period Rate Trust Certificate  
due March 1, \_\_\_\_\_

HARRIS TRUST AND SAVINGS BANK, Trustee

Dividends Payable Semiannually

THE HARRIS TRUST AND SAVINGS BANK, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement, dated as of March 1, 1989, as amended and restated ("Agreement"), by and between the Trustee and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Company"), hereby certifies that \_\_\_\_\_ or registered assigns, is entitled to an interest in the principal amount of \_\_\_\_\_ Dollars in THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EQUIPMENT TRUST, SERIES U, payable on the due date stated above, upon presentation and surrender of this Certificate to the undersigned at its principal office in the City of Chicago, State of Illinois, and to payment of dividends on said principal amount semiannually on March 1 and September 1 of each year beginning as of September 1, 1989, at the Period Rate specified herein from the date hereof, until said due date, at said office of the undersigned, with interest at said dividend rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of Rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Agreement. Notwithstanding the provisions of the preceding sentence, in the case of payments of dividends on this Trust Certificate the undersigned, upon request of the registered holder hereof, will, subject to timely receipt of Rental payments under the Agreement, mail its check to such registered holder at his address shown on the registry books maintained by the undersigned, or, upon the request of the holder for wire transfer, will wire immediately available funds to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee prior to the date that payment is due.

The Period Rate for payment of dividends on the principal amount of this Certificate shall be the rate, stated as a per annum rate, equal to the yield to maturity,

plus \_\_\_\_\_ basis points, on United States Treasury Bills having, at the date of determination of the Period Rate, a period to maturity of six months (provided, however, that the Period Rate for the first dividend period following the original issue of this Certificate shall be the yield to the maturity, plus \_\_\_\_\_ basis points, on United States Treasury Bills having, at the date of such issue, a period to maturity equal to the period until the first scheduled dividend payment date on this Certificate). The Period Rate shall be determined on the date of original issue and thereafter on March 1 and September 1 of each year and shall apply to the immediately succeeding dividend payment period. Trustee shall advise the Period Rate Holder of each Period Rate promptly following its determination by the Trustee. Upon the transfer of any principal amount of this Certificate, the Period Rate for the amount so transferred shall, however, become the rate equal to the rate on comparable trust certificates of similar period to maturity. Said Period Rate as so determined upon such transfer shall, as of the date of transfer on the books of the Trustee, become the Fixed Rate on the principal amount transferred, and said principal amount shall bear dividends at that rate thereafter.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or, in lieu thereof, as provided in the Agreement, cash or obligations defined in the Agreement as "Investments") is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. The Certificate is entitled to the security and the benefit of the Agreement as it may be amended, restated or supplemented. Reference is made to the Agreement (a copy of which is on file with the undersigned at its principal office in the City of Chicago, State of Illinois) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The Trust Certificates are issuable in denominations of \$1,000, and any larger integral multiple of \$1,000, as fully registered Trust Certificates, and the several denominations of Trust Certificates are interchangeable upon presentation thereof at the principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

Subject to the provisions of Section 3.5 of the Agreement, this Certificate is transferable by the registered holder hereof, in person or by duly authorized attorney, on the books of the undersigned upon surrender hereof to the undersigned at its said office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon, subject to the provisions of the next following paragraph, a new Certificate or Certificates of the same maturity and rate and in authorized form and denominations will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer, the undersigned and the Company shall be entitled to deem and treat the registered holder hereof as the absolute owner for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

The provisions of this Certificate and of Section 3.5 of the Agreement notwithstanding, accrued and unpaid dividends on this Certificate determined at the applicable Period Rate or Period Rates prior to the transfer of any principal amount of this Certificate shall, as to said principal amount, be payable on the next scheduled dividend payment date to the holder holding this Certificate immediately prior to transfer,

and the new Trust Certificate issued for said principal amount upon transfer pursuant to Section 3.5 shall be dated as of the date of the transfer, shall as of that date thereupon bear interest at the Fixed Rate determined on that date, and shall not otherwise be subject to the provisions of this paragraph or the second paragraph of this Certificate.

The Trust Certificates are not subject to redemption in whole or in part except as expressly permitted by the Agreement.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount and dividends accrued thereon represented by this Certificate may be declared due and payable, as provided in the Agreement.

This Certificate shall not be deemed a promise to pay of the Trustee and shall not be valid unless manually signed by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the signature of one of its Vice Presidents and its corporate seal to be hereunto affixed and to be attested by an Assistant Secretary.

Dated as of

HARRIS TRUST AND SAVINGS BANK  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

#### GUARANTY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Trust Certificate the prompt payment of the principal of said Certificate, and of dividends thereon at the rate specified in said Certificate, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
Senior Vice President - Finance  
and Chief Financial Officer

## ARTICLE TWO

### DEFINITIONS

**SECTION 2.1. Definitions.** The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

**"Advance Rentals"** shall mean the amounts payable by the Company to the Trustee as Advance Rentals under Sections 5.2 and 6.4(A).

**"Affiliate"** of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

**"Applicable Dividend Rate"** shall mean the Period Rate for the period from and including the date of issuance of the Period Rate Trust Certificates to but not including the Purchase Date, if any, and the Fixed Rate from and including the Purchase Date to and including the date of payment in full of the Fixed Rate Trust Certificates. If for any reason whatsoever Fixed Rate Trust Certificates are not issued and sold, Applicable Dividend Rate shall mean the Period Rate from and including the date of issuance of the Period Rate Trust Certificates to and including the date of payment in full thereof.

**"Casualty Occurrence"** shall have the meaning specified in Section 6.7.

The **"Casualty Value"** of any unit of Equipment shall be considered to be the Cost thereof less depreciation accrued on such Equipment on each March 1, commencing March 1, 1990, at 1/15th of the Cost thereof per annum.

**"Company"** shall mean The Atchison, Topeka and Santa Fe Railway Company and any successor or successors thereto.

**"Cost"**, when used with respect to Equipment, shall mean the actual cost thereof, which Cost shall not exceed the fair value thereof, invoiced to the Trustee hereunder, which shall be the cost invoiced by the manufacturer of the Equipment to the Trustee, and when used with respect to Replacement Units, shall mean the original cost thereof less depreciation accrued thereon on each March 1 at 1/15th of such original cost per annum, and in any such case shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission in effect at such time, sound accounting practice.

**"Date of Original Issue"** with respect to each installment of the Trust Certificates shall mean the date such installment is executed and issued to the initial purchasers thereof pursuant to Section 3.1 of this Agreement.

**"Deposited Cash"** shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 3.1, including any Advance Rentals due therewith, and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 9.9, and (b) any sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) and on deposit with the Trustee.

**"Equipment"** shall mean the forty new locomotives more fully described in Schedule A hereto, which shall have been first put into service no earlier than March 1, 1989.

**"Event of Default"** shall mean any event specified in Section 7.1 to be an Event of Default.

**"Fixed Rate"** shall mean the rate of 9.26% per annum (computed on the basis of a 360 day year consisting of twelve 30-day months) all is specified in the Fixed Rate Trust Certificates.

**"Fixed Rate Agreements"** shall mean the agreement or agreements entered into by the Company and the Period Rate Holder with one or more investors or underwriters, pursuant to which such investors or underwriters shall purchase the Fixed Rate Trust Certificates upon the terms and conditions therein set forth.

**"Fixed Rate Holder"** shall mean any holder, from time-to-time, of the Fixed Rate Trust Certificates issued and outstanding under this Agreement.

**"Fixed Rate Holders"** shall mean collectively all of the holders of the Fixed Rate Trust Certificates.

**"Fixed Rate Trust Certificates"** shall mean the Trust Certificates issued by the Trustee to the Fixed Rate Holders on the Purchase Date pursuant to the Fixed Rate Agreements and any other trust certificates having a Fixed Rate and issued under Section 3.1 or in any transfer, exchange or replacement of any of the foregoing, other than the Period Rate Trust Certificates.

**"Government Securities"** shall mean bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of interest and principal.

The word **"holder"** when used with respect to Trust Certificates shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the registered owner of any Trust Certificate.

**"Investments"** shall mean: (a) Government Securities; (b) commercial paper rated in the highest grade by a nationally recognized credit rating agency; and (c) bankers' acceptances and certificates of deposit (including Eurodollar certificates of deposit) issued by (i) any bank or trust company or a foreign branch thereof which is organized under the laws of the United States or any state thereof and has total deposits in excess of One Billion Dollars; or (ii) any full United States branch of a foreign bank if such foreign bank has total deposits (United States Dollar Equivalent) in excess of Ten Billion Dollars.

**"Make-Whole Premium Amount"** at any time with respect to the Fixed Rate Trust Certificates shall equal the excess of (a) the present value at the time of redemption of each remaining payment of principal and interest on and in respect of the Trust Certificates being redeemed that would otherwise become due and payable (without giving effect to such redemption), determined by discounting semi-annually each such amount utilizing an interest factor equal to the Treasury Yield over (b) the aggregate principal amount of the Trust Certificates then being redeemed. To the extent that the Treasury Yield at the time of such redemption is equal to or higher than 9.26%, the Make-Whole Premium Amount is zero. Such present value shall be determined on and as of the third business day next preceding the date of redemption by discounting semi-annually the amounts of such installments from their respective installment dates or dividend payment dates, as the case may be, to the date of such redemption. The Company shall, not later than the second business day prior to the date fixed for such redemption, give written notice to the holders of the Fixed Rate Trust Certificates of the amount of such Make-Whole Premium Amount, which notice shall specify in reasonable detail the basis for its determination. Said Make-Whole Premium Amount shall be payable only pursuant to an optional redemption of Fixed Rate Trust Certificates by the Company pursuant to Section 4.1 of this Agreement.

**"Officer's Certificate"** shall mean a certificate signed by the Chairman of the Board, the President, the Executive Vice President, any Senior Vice President, or any other Vice President of the Company.

**"Opinion of Counsel"** shall mean an opinion of counsel (who may be counsel to the Company) satisfactory to the Trustee.

**"Period Rate Holder"** shall mean any holder from time-to-time of the Period Rate Trust Certificates issued and outstanding pursuant to this Agreement.

**"Period Rate Holders"** shall mean collectively all of the holders of the Period Rate Trust Certificates.

**"Period Rate"** shall mean the rate to be borne by Period Rate Trust Certificates as specified pursuant to such Period Rate Trust Certificates.

**"Period Rate Trust Certificates"** shall mean the Trust Certificates issued by the Trustee to the Period Rate Holders pursuant to Section 3.1 of this Agreement and any other trust certificates issued hereunder in an exchange or replacement therefor, other than Fixed Rate Trust Certificates.

**"Principal Office"** shall mean the office of the Trustee in the City of Chicago, State of Illinois at which its corporate trust business shall from time to time be conducted.

**"Purchase Date"** shall mean the date of issuance or sale of the Fixed Rate Trust Certificates pursuant to the Fixed Rate Agreements.

**"Remaining Dollar-years"** in respect of the Trust Certificates being redeemed means the product obtained by (1) multiplying (A) the amount of each then remaining required principal payment (including payment at final maturity), by (B) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination of the Weighted Average Life to Maturity of the Trust Certificates

being redeemed and the date such required payment is due, and (2) totaling all the products obtained in (1).

**"Rental"** shall mean the rental payments required by Section 6.4(B).

**"Replacement Funds"** shall have the meaning specified in Section 6.10.

**"Replacement Units"** shall mean have the meaning specified in Section 6.7.

**"Request"** shall mean a written request for the action therein specified signed on behalf of the Company by the Chairman of the Board, the President, the Executive Vice President, any Senior Vice President, or any Vice President of the Company and delivered to the Trustee.

**"Total Authorized Issue"** shall mean an aggregate principal amount of not exceeding \$50,880,000 of Trust Certificates executed and issued under Section 3.1.

**"Treasury Yield"** with respect to the Trust Certificates to be redeemed pursuant to Section 4.1 means (a) in the case where the Weighted Average Life to Maturity of such Trust Certificates being redeemed is less than one year after the date on which such Trust Certificates are to be redeemed, 50 basis points over the average yield to maturity on a government bond equivalent basis of the applicable United States Treasury Bill (as compiled by and published by the United States Federal Reserve Statistical Release designated H.15(519) or its successor publication) corresponding in weighted average life to maturity to such Trust Certificates, and (b) in the case where the Weighted Average Life to Maturity of such Trust Certificates being redeemed is one year or more after such date, 50 basis points over the average yield to maturity on a government bond equivalent basis of the most actively traded United States Treasury Note (as reported by Cantor Fitzgerald Securities Corp. on page 5 of Telerate Systems, Inc., a financial news service or, if such service is no longer in the business of reporting such information, any other financial news reporting service reasonably acceptable to the Company and the Trustee) corresponding in weighted average life to maturity to such Trust Certificates (or if there is no exactly corresponding maturity, an interpolation of the yields for the two most closely corresponding Treasury Note maturities).

**"Trust Certificates"** shall mean the Period Rate Trust Certificates, the Fixed Rate Trust Certificates and any other trust certificates issued hereunder in an authorized transfer, exchange or replacement therefor.

**"Trust Equipment"** shall mean all Equipment and Replacement Units at the time subject to the terms of this Agreement.

**"Trustee"** shall mean HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

**"Weighted Average Life to Maturity"** in respect of the Trust Certificates being redeemed means, as at the time of determination, the number of years obtained by dividing the then Remaining Dollar-years of such Trust Certificates by the outstanding principal payments on such Trust Certificates.

All references herein to Articles, Sections and other subdivisions refer to corresponding Articles, Sections and other subdivisions of this Agreement; and the words herein, hereof, hereby hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

### **ARTICLE THREE**

#### **TRUST CERTIFICATES AND ISSUANCE THEREOF**

**SECTION 3.1. Original Issuance of Trust Certificates.** Upon the initial issuance and sale of any Trust Certificates hereunder, the amount equal to the net proceeds of the Trust Certificates so issued and sold shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. The Company shall forthwith, if necessary, deposit with the Trustee any Advance Rental payable by the Company to the Trustee under Section 6.4(A)(1) hereof. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment but, in the case of the issuance of Fixed Rate Trust Certificates, upon satisfaction of the conditions contained in Section 8 of the Fixed Rate Agreements, the Trustee shall as the Company shall direct by Request: execute and issue Period Rate Trust Certificates or Fixed Rate Trust Certificates in the aggregate principal amounts thereof so to be issued and sold hereunder.

The aggregate principal amount of all Trust Certificates which shall be executed and issued by the Trustee under this Section shall not exceed the Total Authorized Issue, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

**SECTION 3.2. Interests Represented by Trust Certificates; Dividends; Maturities.** Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. The principal amount of each Trust Certificate shall be due and payable in fifteen (15) equal annual installments of principal on March 1, from and including March 1, 1990 to and including March 1, 2004. Each Trust Certificate shall be dated as of the Date of Original Issue and will bear dividends on the unpaid principal amount thereof at the Applicable Dividend Rate, payable semiannually on March 1 and September 1, while outstanding, beginning September 1, 1989; provided, however, that for any Trust Certificate whose Date of Original Issue is less than one calendar month prior to a dividend payment date, the dividends thereon shall be payable beginning as of the first dividend payment date next following that dividend payment date. Trust Certificates which shall be executed and delivered by the Trustee in accordance with the provisions of Section 3.5 and 3.6 hereof shall be dated, and shall bear dividends from, the Date of Original Issue or the dividend payment date to which dividends shall have been paid next preceding or coinciding with the date of such execution and delivery, whichever is later to occur, except that Fixed Rate Trust Certificates sold by Period Rate Holders under Fixed Rate Agreements shall bear dividends only from the Purchase Date.

The principal, dividends, premium, if any, and interest on the Trust Certificates shall be payable at the Principal Office or agency of the Trustee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of



Rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. All monies received by the Trustee pursuant to Section 6.4(B)(3) and (4) shall be applied first to dividends and interest, second, to premium, if any, and third, to principal. Notwithstanding the provisions of the preceding sentence, the Trustee, upon request of the registered holder of a Trust Certificate, will, subject to timely receipt of Rental payments under Section 6.4(B), mail on the day each such payment is due its check to such registered holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such holder prior to the date the payment is due, or, upon request of the holder for wire transfer, will initiate a wire by 11:00 a.m., Chicago, Illinois, time, of immediately available funds to the account of such registered holder at such bank as it may designate by notice in writing to the Trustee prior to that date. The Company agrees to make its Rental payments pursuant to Section 6.4(B) at such times and in such funds as will enable the Trustee to comply with this Section 3.2.

Upon payment in full of the principal, dividends, premium, if any, and interest on the Trust Certificates and upon written request of the Trustee or the Company to do so, the holders of the Trust Certificates shall surrender the same to the Trustee.

**SECTION 3.3. Forms of Trust Certificates and Guaranty.** The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 8.2 shall be in substantially the respective forms set forth in Article One hereof.

**SECTION 3.4. Execution by Trustee.** The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of its President, or one of its Vice Presidents and its corporate seal shall be affixed or imprinted thereon and attested by the signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been executed and issued by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates shall be adopted by the Trustee and be issued, authenticated and delivered as though such person had not ceased to be, or had then been, such officer of the Trustee and shall be as effective and binding as though such person had not ceased to be, or had then been acting as, such officer of the Trustee.

**SECTION 3.5. Trust Certificates; Denominations; Registration; Owners Thereof; Transfer or Exchange of Trust Certificates.** The Trust Certificates: shall be issuable in minimum denominations of \$1,000 or any larger integral multiple of \$1,000 and shall be numbered from UR-1 consecutively upward; shall be registered, as to both principal and dividends, in the name of the holders thereof; shall be transferable in whole or in part upon presentation and surrender thereof for registration of transfer at the Principal Office of the Trustee in the City of Chicago, State of Illinois, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Trust Certificates or by his duly authorized attorney, in form satisfactory to the Trustee, shall be dated as of the date of issue unless issued in an authorized exchange or substitution for another Trust Certificate or Trust Certificates bearing unpaid dividends from an earlier date, in which case they shall be dated as of such earlier date, shall have the Guaranty on such transferred Trust Certificate executed by the Company and shall entitle the registered holder to dividends, premium, if any, and installments of principal from the date thereof. The Trust Certificates to be exchanged shall be surrendered at the Principal Office of the Trustee in the City of Chicago, State of Illinois.

Upon sale by the Period Rate Holders of the Period Rate Trust Certificates on the Purchase Date under the Fixed Rate Agreements, the Trustee shall execute and issue Fixed Rate Trust Certificates in the aggregate principal amount of the Period Rate Trust Certificates so sold by the Period Rate Holders on the Purchase Date.

The Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates of the same maturity and rate and of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at the Principal Office of the Trustee.

Anything to the contrary herein notwithstanding, the parties hereto and any agent of the Trustee may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

The Trustee shall cause to be kept at its Principal Office in the City of Chicago, State of Illinois books for the registration and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

For any registration of transfer, exchange or discharge from registration, the Trustee may, and at the Request of the Company shall, require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith.

Except as may be otherwise provided in the Period Rate Trust Certificates with respect to the transfer of any principal amount of the Period Rate Trust Certificates, each Trust Certificate delivered pursuant to any provision of this Agreement, in exchange or substitution for, or upon the transfer of the whole or any part of one or more other Trust Certificates, shall carry all the rights to dividends, premium, if any, and installments of principal accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, except that the Fixed Rate Trust Certificates sold by Period Rate Holders shall bear dividends only from the Purchase Date and, notwithstanding anything contained in this Agreement, such Trust Certificates shall be so dated that neither gain nor loss in dividends, premium, if any, or principal shall result from such exchange, substitution or transfer.

Except pursuant to a Request, the Trustee shall not be required to transfer or exchange any Trust Certificate for a period of five business days next preceding any dividend payment date.

**SECTION 3.6. Replacement of Mutilated or Lost Trust Certificates.** In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new Trust Certificate of like dividend rate, tenor, maturity and date, and bearing the same or a different number as the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate. The Company shall execute its Guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of

the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange, provided, however, that if the holder of such Trust Certificate is one of the initial holders of the Trust Certificates (or an Affiliate thereof), or is a bank, insurance company, pension fund, fraternal benefit society, endowment or other organization or financial institution that regularly acquires debt securities for investment having a minimum capital and surplus of at least \$50,000,000, the written undertaking of such holder delivered to the Trustee and the Company shall be sufficient security and indemnity under this Section 3.6. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates, and shall preclude (to the extent lawful) any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

## **ARTICLE FOUR**

### **OPTIONAL REDEMPTION AND PREPAYMENT OF FIXED RATE TRUST CERTIFICATES**

No prepayment or redemption of the Trust Certificates may be made except to the extent and in the manner expressly provided in this Agreement.

**SECTION 4.1. Optional Redemption of Fixed Rate Trust Certificates.** The Company may, at its option, at any time or times on or after March 1, 1996 and prior to maturity, redeem all, or, from time to time, any part in a minimum principal amount of \$500,000 or larger multiples of \$100,000, of the Fixed Rate Trust Certificates at par together with the applicable Make-Whole Premium Amount, if any, and accrued dividends to the date fixed for redemption.

**SECTION 4.2 Pro Rata Redemptions.** All redemptions hereunder of less than the entire outstanding aggregate principal amount of all Fixed Rate Trust Certificates are to be made pro rata among all outstanding Fixed Rate Trust Certificates as provided in Section 4.4.

**SECTION 4.3. Notice of Redemption.** In case the Company shall desire to exercise any right to redeem all, or, as the case may be, any part of the Fixed Rate Trust Certificates in accordance with the rights reserved so to do, the Company or, at its Request, the Trustee, in the name of and at the expense of the Company, shall give notice of such redemption to each Fixed Rate Holder.

Each such notice of redemption shall specify the date fixed for the redemption and the principal amount of the Fixed Rate Trust Certificates to be redeemed on such date, and, as hereinafter provided, the applicable Make-Whole Premium Amount, if any, and shall state that the payment for redemption of the portions thereof to be redeemed will be made in the manner contemplated by Section 3.2, that dividends accrued to the date fixed for the redemption will be paid as specified in said notice, and that on or after said date, if such redemption shall then be made, dividends thereon or the portion thereof to be redeemed will cease to accrue. In case the Fixed Rate Trust Certificates

are to be redeemed in part only, the notice shall state the portion of the principal amount of each Fixed Rate Trust Certificate to be redeemed.

Notice of redemption shall be given to the Fixed Rate Holders by mailing such notice of redemption in the manner provided in Section 10.5 to each Fixed Rate Holder at the last address of such holder as it appears in the register of Trust Certificates not less than 30 nor more than 60 days prior to the date fixed for redemption. Without limiting the foregoing, the Company shall give notice in the manner provided in Section 10.5 to each Fixed Rate Holder no later than the second business day prior to the date fixed for redemption pursuant to Section 4.1 of its calculation of the Make-Whole Premium Amount, if any, calculated on and as of the third business day next preceding such redemption date, which notice shall specify in reasonable detail the basis for its determination or calculation.

**SECTION 4.4 When Trust Certificates Called for Redemption Become Due and Payable.** Notice of redemption having been mailed in the manner provided in Section 4.3, the Fixed Rate Trust Certificates or portions of such Trust Certificates specified in such notice shall become due and payable on the date and at the place stated in such notice at par, together with the applicable Make-Whole Premium Amount, if any, and interest on overdue payments at the dividend rate plus 1% and dividends accrued to the date fixed for redemption and on and after such date fixed for redemption (unless the Company shall default in the payment of such Trust Certificates so called for redemption) dividends on such Fixed Rate Trust Certificates or portions of Fixed Rate Trust Certificates shall cease to accrue. On presentation and surrender of such Fixed Rate Trust Certificates at said place of payment in said notice specified, the said Fixed Rate Trust Certificates, or the specified portions thereof, shall be paid and redeemed by the Company, at par, together with interest on overdue payments at the dividend rate plus 1%, together with the applicable Make-Whole Premium Amount, if any, and dividends accrued to the date fixed for redemption (except that if such date is a semiannual dividend payment date, such payment shall not include accrued dividends which shall be paid in the usual manner). Such Fixed Rate Trust Certificates shall be presented and surrendered at said place of payment.

Upon any partial redemption of the Fixed Rate Trust Certificates, the amount so redeemed shall be allocated to all Fixed Rate Trust Certificates at the time outstanding in proportion to the unpaid principal amounts thereof, but only in units of \$1,000, and to the extent that such proportionate allocation shall not result in an even multiple of \$1,000, adjustment may be made by the Company to the end that successive allocations shall result in substantially proportionate payments. All such partial redemptions shall be applied first against the final maturities of all outstanding Fixed Rate Trust Certificates and then, against the annual installments required by Section 3.2 in the inverse order of the due dates of such annual installments.

Upon presentation of any Fixed Rate Trust Certificate which is redeemed in part only, the Trustee shall execute and register and deliver to the holder thereof, at the expense of the Company, a new Fixed Rate Trust Certificate or Fixed Rate Trust Certificates in an aggregate principal amount equal to the unredeemed portion of the Fixed Rate Trust Certificate so presented with the Guaranty of the Company endorsed thereon.

Notwithstanding the foregoing, the initial holders of the Fixed Rate Trust Certificates, but excluding their successors, assigns, or transfers, shall not be required to

present and surrender the Trust Certificates in the event of a redemption in part only, provided that any such initial holder provides prior to such redemption its written agreement to make notation of such redemption on the Trust Certificate or any Trust Certificate to be redeemed. If the Fixed Rate Trust Certificates are redeemed in full and upon written request of the Company to do so, the holders of the Fixed Rate Trust Certificates shall surrender the same to the Trustee within 60 days after the date of such request. Without limiting the foregoing, any such initial holder of the Fixed Rate Trust Certificates shall, in addition to complying with all other applicable requirements of Article Three and Article Four, make notation of all redemptions or prepayments thereon prior to any transfer, exchange or replacement of any such Fixed Rate Trust Certificates. Such holder shall also furnish to the Trustee and the Company such security and indemnity as may be required by the Trustee and by the Company in their discretion; provided however, that the written undertaking of such holder delivered to the Trustee and the Company shall be sufficient security and indemnity under this Section 4.4.

**SECTION 4.5. Certain Prepayments.** The Trustee, if the Company so requests, shall apply all or a portion of Replacement Funds as defined in Section 6.10 to the payment thereunder, at par, in a minimum principal amount of \$500,000 or larger multiples of \$100,000, of the Fixed Rate Trust Certificates together with accrued dividends to the date of prepayment. All such payments shall be applied pro rata among all holders of outstanding Fixed Rate Trust Certificates and in each case first against the final maturities of such holder's outstanding Fixed Rate Trust Certificates and then, against the annual installments required by Section 3.2 in the inverse order of the due dates of such annual installments.

Notice of payments pursuant to this Section 4.5 shall be delivered by the Company to the Trustee and the holders of the Fixed Rate Trust Certificates by mailing such notice of payment in the manner provided in Section 10.5 to the Trustee and each such holder at the last address of such holder as it appears in the register of Trust Certificates not less than 30 nor more than 60 days prior to the date fixed for payment.

## **ARTICLE FIVE**

### **ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH**

**SECTION 5.1. Acquisition of Equipment by Trustee.** The Company, as speedily as may be, shall cause to be constructed and shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto.

To that end, the Company hereby assigns to the Trustee all of its rights, title and interest under the contract or contracts entered into by the Company for the construction of such Equipment. Said Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to accept such delivery, and an Officer's Certificate as to such delivery and acceptance shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other equipment similar to the Equipment in addition to or in lieu of any units of the Equipment specifically described in Schedule A hereto (prior to the acceptance of such Equipment by the Trustee or its agent or agents), or in the event that any unit of the Equipment described in Schedule A hereto shall suffer a Casualty Occurrence as defined in Section 6.7, prior to such acceptance, the Company may cause to be sold to the Trustee other new locomotives or new standard-gauge railroad rolling stock (other than passenger equipment or work equipment) to be substituted under the trust, whereupon such other equipment shall become Equipment hereunder, and to that end the Company, upon entering into a contract or contracts for the construction of such other equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts.

**SECTION 5.2. Payments Out of Deposited Cash.** From time to time, when and as any Equipment shall have been delivered to and accepted by the Trustee or its agent pursuant to Section 5.1, the Trustee shall (subject to the provisions of Section 5.3) pay, upon Request, to the manufacturer or manufacturers or owner or owners of the delivered Trust Equipment out of Deposited Cash then held by the Trustee, together with such additional sums, if any, paid by the Company to the Trustee in Advance Rentals that are necessary to provide for payment in full of, the aggregate Cost of such Trust Equipment as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 5.3(a). The Company covenants that, contemporaneously with any such payment by the Trustee out of Deposited Cash, it will pay to the Trustee such necessary amounts, if any, of Advance Rentals.

**SECTION 5.3. Supporting Papers.** The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers or owner or owners and an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment was delivered to the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 6.6 hereof;

(b) A bill or bills of sale of such Trust Equipment from the manufacturer or manufacturers or owner or owners thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein);

(c) An Opinion of Counsel, satisfactory to the Trustee, that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances; and

(d) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 8.4 hereof.

Any Officer's Certificate pursuant to this Section 5.3 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

**SECTION 5.4. Ratio of Cost of Trust Equipment to Trust Certificates.** If the aggregate final Cost of the Trust Equipment shall be less than 100 percent of the aggregate principal amount of Trust Certificates issued hereunder, the Company will at its option either (a) cause to be purchased or constructed and transferred to the Trustee by supplement hereto, subject to all the terms of this Agreement, additional equipment of the type described in Section 5.1 in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 100 percent of the aggregate principal amount of Trust Certificates issued hereunder or (b) pay to the Trustee (in addition to all other amounts to be paid by it under the provisions of this Agreement) as additional rent such amount, if any, as shall, when added to:

(i) The aggregate final Cost of such of the Trust Equipment as shall have been transferred to the Trustee under this Agreement; and

(ii) Any net proceeds from the sale of Trust Certificates, together with any Advance Rental paid to the Trustee, held by the Trustee after payment of the aggregate final Cost of such Trust Equipment so transferred and delivered;

equal 100 percent of the aggregate principal amount of Trust Certificates issued hereunder.

**SECTION 5.5. Interest on Moneys Received by Trustee.** Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by Section 9.9 hereof shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder.

**SECTION 5.6. Application of Surplus Deposited Cash.** Any Deposited Cash remaining in the hands of the Trustee after the delivery of all the Trust Equipment to be delivered pursuant to Section 5.1 and Section 5.3 hereof and payment therefor in the manner provided herein shall, upon Request by the Company, be applied by the Trustee in the manner as described in this Article Five toward the purchase of additional Equipment included as Trust Equipment in accordance with Section 5.1 and Section 6.2 hereof or to the payment of Rentals under Section 6.4(B)(4) hereof.

## **ARTICLE SIX**

### **LEASE OF TRUST EQUIPMENT TO THE COMPANY**

**SECTION 6.1. Lease of Trust Equipment.** The Trustee does hereby let and lease all the Equipment to the Company, for a term of approximately 15 years ending on or before March 1, 2004.

**SECTION 6.2. Inclusion of Additional or Substituted Equipment.** In the event that the Company shall, as provided in Section 5.1 or Section 5.4(a) or in Section 6.7 and 6.10 hereof, cause to be purchased, constructed or manufactured and transferred to the Trust other equipment in addition to or in substitution for any of the Equipment herein specifically described, such other equipment shall be included as part of the Trust Equipment by supplement hereto executed by the Company and the Trustee and to be filed with the Interstate Commerce Commission and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

**SECTION 6.3. Equipment Subjected Hereto by Delivery.** As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, ipso facto and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

**SECTION 6.4. Rental Payments; Limitation on Tax Liability.** The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rents hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment and whether or not at the time any thereof shall have been delivered to the Company):

(A) The Company shall pay to the Trustee, as hereinafter provided, as Advance Rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 6.7 and 6.10 hereof) and the portion of such Cost to be provided out of the net proceeds of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee, the Company shall have paid or shall pay to the Trustee, as Advance Rental hereunder, a sum equal to the amount, if any, by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such Advance Rental as follows:

(1) At the time of issue of the Trust Certificates, a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates issued;

(2) Upon delivery of any of such Trust Equipment a sum equal to the portion of the Cost of such delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 5.2 hereof.

(B) In addition to such Advance Rental, the Company shall pay to the Trustee, as hereinafter provided, as Rental for the Trust Equipment and



whether or not at the time any thereof shall have been delivered to the Company, the following:

(1) (a) The necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(2) Any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust or of this Agreement, which the Trustee, as such, may be required to pay;

(3) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and, to the extent legally enforceable, interest at the Applicable Dividend Rate plus 1% from the due date upon the amount of any dividends which shall not have been paid when due until the same shall be paid in full; and

(4) The installments of principal of the Trust Certificates, and any applicable Make-Whole Premium Amount, in any such case as and when the same shall become payable, whether upon the date of maturity or otherwise under the provisions thereof or of this Agreement, and interest at the Applicable Dividend Rate plus 1% from the due date of any installment of principal or the due date of the Make-Whole Premium Amount, if any, which in any such case shall not have been paid when due until the same shall be paid in full.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of any government or taxing authority of the United States of America or of any state, county, municipality or other taxing authority to be paid on behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee (acting at the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates) the rights or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

**SECTION 6.5. Termination of Lease.** At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder or under the Fixed Rate Agreements or under the Company's guaranties endorsed on the Trust Certificates shall have been completed and fully made (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust

Equipment shall vest in the Company, and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon the public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; provided, however, that the Trustee, before being required to make any such repayment shall, at the expense of the Company, give notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of such notice, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company. In no event shall the holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

**SECTION 6.6. Marking of Trust Equipment; Permissible Markings.** The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously marked upon each side of such unit, by a metal plate or otherwise, the following words, in letters not less than one inch high:

**OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT  
FILED WITH THE I.C.C. PURSUANT TO 49 U.S.C. 11303**

Such marking shall be readily visible and shall indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any such marking shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded as provided in Section 8.4 hereof.

The Trust Equipment may be lettered "ATSF" or "SANTA FE", and may bear the circle and cross emblem of ATSF in any of its forms, and may be lettered with the name or initials of any railroad company which is permitted to use such equipment as hereinafter provided, or may be lettered in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein. The Trust Equipment may also be numbered for convenience of identification and bear identifying symbols and lettering of the Company. During the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a

claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

**SECTION 6.7. Maintenance of Trust Equipment; Casualty Occurrences.** The Company agrees that it will, at its own cost and expense, maintain and keep all of the Trust Equipment in good order and proper repair and at all times in compliance with any applicable standards set by the Federal Railroad Administration, the Association of American Railroads or the U.S. Department of Transportation (it being understood and agreed that any part or component added to any unit of Trust Agreement to meet any such applicable standards shall be deemed to be an accession to the Trust Equipment), unless and until it becomes worn out, lost, stolen, destroyed, irreparably damaged, or, at any time after March 1, 1999 is unsuitable for use, or shall be permanently requisitioned or taken over by any governmental authority under the power of eminent domain, or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the final maturity date of the Trust Certificates, being hereinafter called a "Casualty Occurrence"). Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall deliver to the Trustee an Officer's Certificate describing such unit and stating the then Casualty Value thereof and shall either (A) deposit with the Trustee an amount in cash equal to the Casualty Value of such unit; or (B) cause to be transferred to the Trustee additional new, used or remanufactured locomotives or other standard-gauge railroad rolling stock (other than passenger equipment or work equipment ("Replacement Units")), free from all liens and encumbrances, having a Cost at least equal to the then Casualty Value and remaining service life of the unit of Equipment having suffered the Casualty Occurrence and deliver to the Trustee, in respect of such Replacement Units, certificates, bills of sale and Opinions of Counsel, all in like manner as provided in Section 5.3 hereof, and in addition, an Officer's Certificate describing such Replacement Units and stating the Cost and the then Casualty Value thereof and cause Schedule A hereto to be supplemented and such supplement to be duly filed with the Interstate Commerce Commission all in accordance with applicable law. With respect to any Replacement Unit added to the Trust pursuant to this Section 6.7 and Section, 6.10, the Casualty Value of any such Replacement Unit added to the Trust shall be deemed to be the Casualty Value of the unit of Equipment having suffered the Casualty Occurrence. The rights and the remedies of the Trustee to enforce or to recover any of the Rental payments shall not be affected by reason of such Casualty Occurrences. Cash deposited with the Trustee pursuant to this Section 6.7 shall be held and applied as provided in Section 6.10.

**SECTION 6.8. Reports.** The Company covenants and agrees to furnish to the Trustee and each holder of Trust Certificates, whenever required by the Trustee or any such holder, and at least once in every calendar year, if so required, following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (a) the amount, description and numbers of all the Trust Equipment that may have become worn out, or that may have suffered a Casualty Occurrence since the date of the last preceding statement, (b) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement the plates or marks required by Section 6.6 hereof have been preserved, or that the same when repainted or repaired have been again plated or marked as required thereby, and (c) such other information as to the condition and state of repair of the Trust Equipment as the Trustee or any holder of the Trust Certificates may reasonably request. Any institutional holder of the Trust Certificates

and the Trustee, upon at least ten business days prior written notice to the Company, by its respective agent and at its sole cost, expense and risk, shall have the right, but shall be under no duty, to inspect the Trust Equipment, at the then existing locations thereof; provided that unless and until an Event of Default hereunder shall have occurred and be continuing, the holders of the Trust Certificates and the Trustee may not so inspect the Trust Equipment more than once in the aggregate in any calendar year.

**SECTION 6.9. Possession of Trust Equipment; Assignments.** The Company, so long as an Event of Default shall not exist and be continuing hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company, and the use thereof, whether under lease or otherwise, upon the lines of railroad owned or operated by ATSF (either alone or jointly with another) or by any Affiliate of the Company (either jointly or with another), or upon lines over which the Company or any such Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other carriers in the usual interchange of traffic with the Company and upon connecting and other carriers over which through service may from time to time be afforded to the Company, but only upon and subject to all the terms and conditions of this Agreement.

The Company shall not, without first obtaining the written consent of the Trustee, acting at the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates (which consent and direction shall not be unreasonably withheld if the Trustee's lien on the Trust Equipment is and shall continue to be adequately secured), assign or transfer its rights hereunder, or sublet the Trust Equipment or any part thereof, except in any such case to either an Affiliate of the Company or to a permitted assignee or sublessee as hereinafter provided, in any which case such assignment, transfer or sublease shall be for use of the Trust Equipment predominately within the United States and shall be expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of the Trustee hereunder; and the Company shall not, without such written consent, except as provided in the first paragraph of this Section 6.9, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; provided, however, that the Company, so long as it shall not be in default under the terms of this Agreement, shall be entitled, without first obtaining the written consent of the Trustee, to sublet the Trust Equipment or any part thereof to another Class I railroad company and, with the prior written consent of the Trustee, acting at the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates (which consent and direction shall not be unreasonably withheld if the Trustee's lien on the Trust Equipment is and shall continue to be adequately secured), to sublet the Trust Equipment or any part thereof to any other corporation, in any such case under a sublease for use of the Trust Equipment predominately within the United States. Any sublease shall expressly provide (a) that the rights of the sublessee in and to such Trust Equipment shall be subject and subordinate to the rights of the Trustee in and to such Trust Equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder, and (b) that such Trust Equipment may be lettered or marked for the convenience of identification of the leasehold interest of the sublessee therein only in accordance with the provisions of Section 6.6 hereof. Anything contained in this Agreement, including without limitation this Section 6.9, to the contrary notwithstanding, the Company may not without prior written permission of the Trustee, acting at the written direction of the holders of at least 51% of the outstanding principal amount of Trust Certificates (which permission shall not be unreasonably withheld if the Trustee's lien on the Trust Equipment is and shall continue to be adequately secured), assign, transfer or sublease more than 5% at any one time of the Trust Equipment for use predominately outside of the United States

and notwithstanding any transfer, assignment or sublease as contemplated herein, the Company shall remain liable as a principal and not as a guarantor or surety for the performance of its obligations under this Agreement and the Fixed Rate Agreements and in respect of the guaranties on the Trust Certificates. For purposes of this section, use predominately outside of the United States shall mean such use for more than 3 months in any calendar year. The Company shall deliver to the Trustee a copy of any sublease promptly after its execution. In each instance where the Trustee is to act at the written direction of the holders under this paragraph, the Trustee shall advise the holders by written notice specifying in detail the matter for which the Trustee's action or consent is requested by the Company. Unless a holder objects in writing to the Trustee within 45 days of the giving of said notice (which writing shall specify the grounds for such objection), the holder shall be deemed to have directed the Trustee by written direction to approve the action or consent so requested by the Company.

The Company will not merge, consolidate, or sell, assign or transfer all or substantially all of its property to any other corporation unless the survivor is the Company or the survivor of such merger or consolidation or such transferee shall be a corporation organized under the laws of the United States of America or a state thereof and shall expressly assume in writing all the obligations and liabilities under the Agreement and as guarantor of the Trust Certificates and no Event of Default shall exist under the Agreement; provided that if in connection within any such merger, consolidation, sale, assignment or transfer any of the conditions herein above set forth cannot be satisfied, then and in such event the Company may redeem all, but not less than all, of the Trust Certificates upon the terms and conditions provided in Section 4.1. Upon satisfaction of these conditions, and only these conditions, any merger, consolidation or sale of assets shall be permitted and there will be no requirement that the Trust Certificates be prepaid, provided, however, an assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant.

In the event that prior to the expiration of the term of this Agreement, the use of any unit of Trust Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before the final maturity of the Trust Certificates, the Company's duty to pay Rentals in respect thereof and to perform all of its obligations hereunder and under the Fixed Rate Agreements and the guaranties endorsed on the Trust Certificates shall continue for the duration of such requisitioning or taking. The Company shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

**SECTION 6.10. Release and Replacement of Trust Equipment.** Any units of the Trust Equipment which shall have been the subject of a Casualty Occurrence may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company the Trustee will release any such units of the Trust Equipment upon the satisfaction of the terms and conditions of Section 6.7 and this Section 6.10 with respect to such units. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such Casualty Value of such Trust Equipment or caused to be transferred to this Trust Replacement Units as provided for in Section 6.7.

Any money paid to the Trustee pursuant to this Section 6.10 or Section 6.7 hereof (the "Replacement Funds") shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Company shall direct by a Request filed with the Trustee, either to or toward the Cost of one or more Replacement Units (to replace the unit or units of Trust Equipment which has or have been the subject of a Casualty Occurrence) or to the prepayment of the Trust Certificates pursuant to Section 4.5. Anything herein contained to the contrary notwithstanding, the deposit of Replacement Funds with the Trustee pursuant hereto shall not be deemed or construed to relieve the Company of its obligations with respect to the payment in full of installments of principal, the Make-Whole Premium Amount, if any, and dividends and interest on overdue payments of principal, premium, if any, and dividends at the Applicable Dividend Rate plus 1% or in respect of its obligations under the guaranties endorsed on the Trust Certificates.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to Section 6.7 or Section 6.10 shall be invested, pending its application as hereinabove provided, in Investments as provided in Section 9.9 hereof.

The Company will cause any Replacement Units to be marked as provided in Section 6.6. Any and all such Replacement Units shall constitute accessions to the Trust Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Trust Equipment delivered hereunder and shall be included in the term "Trust Equipment" as used in this Agreement. Title to all such Replacement Units shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Trustee subject to the provisions hereof, and the Company shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act of an appropriate supplemental agreement describing such Replacement Units) and do, or cause to be done, any and all such acts as may be necessary to cause such Replacement Units to come under and be subject to this Agreement and to protect the title of the Trustee to such Replacement Units. Unencumbered title to all such Replacement Units shall be warranted in like manner as the units of Trust Equipment replaced.

Whenever the Company shall file with the Trustee, pursuant to the provisions of this Section 6.10, a Request to apply Replacement Funds to or toward the Cost of a Replacement Unit or Units of Equipment, the Company shall file therewith in such number of counterparts as may reasonably be requested:

(a) an Officer's Certificate certifying (1) that such Replacement Unit or Units is or are Trust Equipment as defined herein and has or have been marked as required by the provisions of this Section 6.10, (2) the aggregate Cost of such Replacement Unit or Units (3) that the Casualty Value of such Replacement Unit or Units is or are at least equal to the Casualty Value of the unit of Trust Equipment which has been the subject of the related Casualty Occurrence and (4) that the remaining service life of each such Replacement Unit or Units is individually at least equal to the remaining service life of such unit of Trust Equipment; and

(b) an Opinion of Counsel for the Company (which may be counsel for the Company) (1) that title to such Replacement Unit or Units is vested in the Trustee free and clear of all liens and encumbrances and that such

Replacement Unit or Units has or have come under and become subject to this Agreement and (2) that a Supplement to this Agreement has been duly filed with the Interstate Commerce Commission in accordance with Section 11303 Interstate Commerce Act.

If an Event of Default shall have occurred and be continuing, all money then held by the Trustee pursuant to this Section 6.10 shall be applied by the Trustee as if such money were money received upon the sale of Equipment pursuant to Section 7.3.

In order to facilitate the sale, or other disposition of any unit of Trust Equipment suffering a Casualty Occurrence or no longer being suitable for use, the Trustee shall upon Request, after deposit by the Company of the required amount, execute and deliver to the Company's vendee, assignee or nominee, a bill of sale (without warranties) for such unit, and such other documents as may be required to release such unit from the terms and scope of this Agreement, in such form as may be reasonably requested by the Company.

**SECTION 6.11. Indemnification by the Company.** The Company covenants and agrees to indemnify the Trustee and each holder of the Trust Certificates against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. The indemnification obligations of the Company under this Section 6.11 shall survive the termination of this Agreement and the payment in full of the Trust Certificates.

**SECTION 6.12 Insurance.** The Company will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are customary under the Company's risk management programs and in keeping with risks assumed by corporations of established size and reputation engaged in substantially the same businesses and similarly situated: (a) public liability insurance (including Federal Employer Liability Act coverage) against loss or damage for personal injury, death or property damage suffered upon, in or about any premises occupied by it or occurring as a result of the ownership, maintenance or operation by it of any automobile, truck or other vehicle or services rendered by it; and (b) all risk property insurance on the Trust Equipment; provided, however, that the Company may self-insure with respect to any or all of the above as is customary under the Company's risk management programs and in keeping with the risks assumed by

corporations of established reputation engaged in substantially the same businesses and similarly situated; and provided further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by the Company. In the event of any insured property loss, the payment for such loss shall be made directly to the Company.

## **ARTICLE SEVEN**

### **REMEDIES IN EVENT OF DEFAULT**

**SECTION 7.1. Events of Default.** The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the Rental (including Advance Rental) payable hereunder for more than 10 days after the same shall have become due and payable; or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or permit any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee or any holder of the Trust Certificates shall have demanded in writing to the Company such cancellation and recovery of possession or within said 30 day period to deposit with the Trustee a sum in cash equal to the Casualty Value of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment); or

(c) the Company shall, for more than 30 days after the Trustee or any holder of the Trust Certificates shall have demanded in writing addressed to the Company performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee, as the case may be, for such compliance; or

(d) the lease provided for herein shall be terminated by operation of law; or

(e) the guaranty of the Company in respect of any Trust Certificate shall cease to be in full force and effect for any reason whatsoever, including, without limitation, a final determination by any governmental body or court which is not subject to further administrative or judicial appeal that such guaranty is invalid, void or unenforceable or the Company shall contest or deny in writing the validity or enforceability of its obligations under any such guaranty; or



(f) any material representation, warranty, certificate or financial statement made or furnished in connection with the sale of the Fixed Rate Trust Certificates is shown to have been materially inaccurate, as of the date when made, with respect to the financial condition or operations of Company and its consolidated subsidiaries taken as a whole.

(g) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, or under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 60 days (or such longer period not to exceed 120 days as may be agreed to in writing by the holders of at least 51% in principal amount of the then outstanding Trust Certificates) from the filing of such petition (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and the obligations of the Company under the Company's guaranties endorsed on the Trust Certificates shall not have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days (or such longer period not to exceed 120 days as may be agreed to in writing by the holders of at least 51% in principal amount of the then outstanding Trust Certificates) after such appointment, if any, or 60 days (or such longer period not to exceed 120 days as may be agreed to in writing by the holders of at least 51% in principal amount of the then outstanding Trust Certificates) after commencement of the case shall have been filed, whichever shall be earlier, or within 60 days by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision, as the same may hereafter be amended; or

(h) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 120 days from the commencement of such proceedings (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under the guarantees endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 120 days after such appointment, if any, or 120 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates in the case of any Event of Default pursuant to Section 7.1(a), and upon written request of the holders of at least 51% in principal amount of the then outstanding Trust Certificates in the case of all other Events of Default, shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the Rentals (including any unpaid Advance Rental, but not including Rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 6.4 hereof and not theretofore paid. Thereupon the entire amount of such Rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Applicable Dividend Rate plus 1%, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, and to collect such judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall happen, the Trustee in its discretion may, and in case of default in payment of principal and interest, upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and upon written request of the holders of not less than 51% in principal in case of all other Events of Default, shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall forthwith become and shall be due and payable without further demand, together with interest at the Applicable Dividend Rate plus 1%, to the extent legally enforceable, on any portion thereof overdue.

In case the Company shall fail to pay, or cause to be paid, any installment of Rental payable pursuant to Section 6.4B(3) or B(4) hereof when and as the same shall have become due and payable hereunder and such default shall have continued for a period of 10 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the Rentals and other sums so due and unpaid and/or for the payment of sums due and owing pursuant to the guaranties endorsed on the Trust Certificates and the recovery of reasonable costs of collection, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or other obligor upon the Trust Certificates under Title 11 of the United States Code or any other Federal or state law relating to bankruptcy or insolvency, or in case a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization shall have been appointed for the Company or for such other obligor or for its property, or in the case of any other judicial proceedings relative to the winding up or liquidation of the affairs of the Company or for such other obligor, the Trustee, irrespective of whether the Rental or Advance Rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 7.1, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the Rentals

(including any unpaid Advance Rental, but not including Rentals required for the payment of dividends accruing after the date of payment of the accelerated Rentals, if any), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement.

All rights of action and rights to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

**SECTION 7.2. Remedies.** In case of the happening of any Event of Default, the Trustee shall have and may exercise all rights of a secured party in Article 9 of the Uniform Commercial Code of any applicable jurisdiction and may by its agents enter upon the railroads and premises of the Company and of any sublessee or user of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of Rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of Rentals payable by the Company as provided in Section 7.1 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of the then outstanding Trust Certificates hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by

the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of Rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 6.4 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured.

**SECTION 7.3. Application of Proceeds.** If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 7.1 and 7.2 hereof, all payments made by or for the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, (b) of the dividends then due, with interest on overdue dividends at the Applicable Dividend Rate plus 1% to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and, if not sufficient, then pro rata on all Trust Certificates, applied first to dividends and interest and second to principal, (c) all other charges, expenses, advances or sums due and owing from the Company in accordance with the provisions of this Agreement, the Fixed Rate Agreements or the guaranties endorsed on the Trust Certificates, and (d) the remainder thereof to the Company.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

**SECTION 7.4. Waiver of Default.** If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of Rentals shall have been declared and become due and payable, all as in Section 7.1 hereof provided, but before March 1, 2004, all arrears of Rentals and Advance Rentals (with interest upon any overdue Rental installments at the Applicable Dividend Rate plus 1% on the respective portions of such Rental installments allocable to the outstanding Trust Certificates and any overdue Advance Rentals), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder or under the Fixed Rate Agreements or in respect of the guaranties endorsed on the Trust Certificates (other than the principal of Trust

Certificates and any other Rental installments which shall not at the time have matured according to their terms) shall be paid by or for the Company before any sale or lease by the Trustee or any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof and thereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so directed in writing by the holders of at least 51% of the then outstanding principal amount of the Trust Certificates which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

**SECTION 7.5. Obligations Not Affected by Remedies.** No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or in respect of the guaranties endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of, premium, if any, and dividends on the Trust Certificates.

**SECTION 7.6. Delivery of Trust Equipment to Trustee.** In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate of the Company for the delivery of the Trust Equipment to it, the Company shall at its own expense forthwith and in the usual manner cause the Trust Equipment to be moved to such point or points on such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate of the Company until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, or cause to be furnished, without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. The Company agrees to maintain and keep the Trust Equipment in good order and proper repair all as provided in Section 6.7 hereof after possession of the Trust Agreement has been demanded by the Trustee until such Trust Equipment has been delivered to the Trustee for disposition. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

**SECTION 7.7. Trustee to Give Notice of Default.** The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder actually known to a responsible officer of the Corporate Trust Department of the Trustee immediately upon such officer so learning of the same.

**SECTION 7.8. Control by Holders of Trust Certificates.** The holders of not less than 51% in aggregate unpaid principal amount of the then outstanding Trust Certificates, by written direction executed and delivered to the Trustee, shall have the

right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising or refraining from exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction (a) if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken or (b) if the Trustee shall be advised by counsel that the action so directed may involve it in personal liability unless it shall have received a satisfactory indemnity therefor. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with any such direction given hereunder.

**SECTION 7.9. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest.** Notwithstanding any other provision in this Agreement, the right (which, it is understood, shall exist) of any holder of any Trust Certificate to receive payment of the principal of, Make-Whole Premium Amount, if any, and dividends and interest on, such Trust Certificate on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment or the guaranty thereof by the Company on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof for the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

**SECTION 7.10. Remedies to be Cumulative.** The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## **ARTICLE EIGHT**

### **ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY AND ATSF**

**SECTION 8.1. Company to Make Payments Provided For.** The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the Rentals (including Advance Rentals) and of the other amounts provided for herein and of the other amounts provided for herein, including but not limited to any Make-Whole Premium Amount.

**SECTION 8.2. Guaranty to Holders of Trust Certificates.** The Company absolutely and unconditionally covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount of such Trust Certificates thereof, all dividends and any applicable Make-Whole Premium Amount, in any such case in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon at the Applicable Dividend Rate plus 1% to the extent legally enforceable) and shall receive dividends thereon in like money at the rate specified therein from the date specified therein to the date of maturity or earlier redemption, if any, of such Trust Certificate, at the times and place and otherwise as

expressed in the Trust Certificates (and, if not so paid, with interest thereon at the Applicable Dividend Rate plus 1% to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof, Make-Whole Premium Amount, if any, and of the dividends thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual signature of one of its authorized officers. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

**SECTION 8.3. Discharge of Liens.** (a) The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold and residual interests of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless such contest will in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and not delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

(b) All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to the Trustee with respect to the amount of any local, state, provincial or federal Canadian or United States or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes imposed on the Trustee in connection with the execution of its duties under this Agreement), assessments or license fees ( and any charges, fines or penalties in connection therewith) (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Company agrees to cause to be paid on demand in addition to the payments to be made by it provided herein. The Company will also cause to be paid promptly all Impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof by the Company or upon the earnings arising therefrom or upon the Trustee solely by reason of its interest therein, and any and all Impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby, and will cause to be kept at all times all and every part of such unit free and clear of all Impositions which might in any way affect the interest of the trustee or result in a lien, claim or encumbrance upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to be Trustee; provided, however, that the Company shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the

non-payment thereof does not materially adversely affect the property or rights of the Trustee or the holders of the Trust Certificate hereunder. If any Impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; provided, however, that the Company shall not be obligated to reimburse the Trustee for any Impositions so paid unless the Trustee shall have been in the opinion of its counsel legally liable with respect thereto, or unless the Company shall have approved the payment thereof.

In the event any reports with respect to Impositions are required to be made on the basis of individual units of the Trust Equipment, the Company will make or cause to be made such reports in such manner as to show the interest of the Trustee in such units or will notify the Trustee of such requirement and will make or cause to be made such reports in such manner as shall be satisfactory to the Trustee.

In the event that, during the continuance of this Agreement, the Company becomes liable for the payment or reimbursement of any Impositions, pursuant to this Section 8.3(b), such liability shall continue, notwithstanding the expiration of the term of this Agreement, until all such Impositions are paid or reimbursed by the Company.

**SECTION 8.4. Payment of Expenses; Filing and Recording.** The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment and in connection with any amendments, waivers or consents pursuant to the provisions hereof, including without limitation any amendment, waiver or consent resulting from any work-out, restructuring or similar proceeding relating to the performance by the Company of its obligations under this Agreement, the Fixed Rate Agreements or pursuant to the guaranties endorsed on the Trust Certificates. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303, or any successor provision thereto. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

**SECTION 8.5. Further Assurances.** The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

**SECTION 8.6. Payment Notwithstanding Acquisition of Trust Certificates by Company.** The Company covenants that it will make payment of the Rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates shall have been acquired by the Company or any of its Affiliates or shall not have been presented for payment.



## **ARTICLE NINE**

### **THE TRUSTEE**

**SECTION 9.1. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

**SECTION 9.2. Duties and Responsibilities of the Trustee.** In the case an Event of Default has occurred and is continuing which has not been cured or waived in writing and of which the Trustee has knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which have occurred, the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provision of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement; and

(d) the Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

**SECTION 9.3. Application of Rentals.** The Trustee covenants and agrees to apply and distribute the Rentals received by it under Section 6.4 hereof (other than sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) hereof) when and as the same shall be received, and to the extent that such Rentals shall be sufficient therefor, for the purposes specified in said Section 6.4(B).

**SECTION 9.4. Duties in Respect of the Trust Certificates.** The Trustee

shall cause to be kept at its Principal Office, books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

**SECTION 9.5. Insuring or Taking Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents.** The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of the Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Section 5.3 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

**SECTION 9.6. No Obligation to Enforce Trust Unless Requested and Indemnified.** The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested in writing by the holders of not less than 51% (except as may be otherwise provided herein) in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto.

**SECTION 9.7. Limitations on Actions by Holders of Trust Certificates.** No holder of any Trust Certificate shall have any right to institute any suit, action or proceeding for the execution and enforcement of the trust hereby created unless, after the aforesaid request in writing by the holders of not less than 51% (except as may be otherwise provided herein) in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfactory to it shall have been provided, and after 10 days shall have elapsed after receipt by the Trustee of such request, it shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 9.7 nor the provisions of Section 9.6 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

**SECTION 9.8. Assumption of No Default; Reliance on Notices and Other Documents.** The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 25% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default or Event of Default desired to be brought to the attention of the Trustee. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

**SECTION 9.9. Money Held by Trustees; Authorized Investments.** Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Chicago banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, as requested by the Company, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Investments, at such prices, including any premium and accrued interest, as requested by the Company, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, as requested by the Company, or the Trustee may, in the event funds are required for payment against delivery of Equipment or in the event funds are required for any redemption or prepayment pursuant to Article 4, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment, including accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of Rentals received by it for that purpose under the provisions of Section 6.4(B)(1)(b) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof, shall be entitled to receive any profit which may be realized from any sale or redemption of Investments.

**SECTION 9.10. No Liability for Trust Equipment; Miscellaneous Matters.** The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturer or manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and willful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

The Company agrees to indemnify the Trustee for, and to hold harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the one being so indemnified, arising out of or in connection with the acceptance or administration of the trust hereby created or the authentication and delivery of any Trust Certificates issued hereunder, as the case may be, including the costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

**SECTION 9.11. Reports.** The Trustee shall, at least once in each year, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may reasonably require, and the Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

**SECTION 9.12. Resignation by Trustee; Appointment of Successor Trustee.** If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company and the holders of the Trust Certificates in writing not less than 60 days prior to the effective date of such termination and the Trustee or any successor to it in the trust hereby created may be removed by the holders of at least a majority in principal amount of the then outstanding Trust Certificates by written notice delivered to the Trustee and to the Company, and in any such case, the Company shall within 10 business days thereafter designate in writing to the Trustee and the holders of the Trust Certificates a bank, a trust company or other comparable financial institution, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investments held by the Trustee hereunder in which any of said moneys may then be invested and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the party of the first part. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within 10 business days from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee. The foregoing provisions are, however, subject to the right of the holders of at least a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made

within one year from the date of the giving<sup>9</sup> of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a bank, trust company or comparable financial institution organized under, or having a branch duly qualified to conduct business as a bank, trust company or financial institution under, the laws of the United States of America or any of the states thereof and having a capital and surplus aggregating at least the equivalent of U.S. \$100,000,000, if there be such bank, trust company or comparable financial institution willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

**SECTION 9.13. Merger, Conversion or Consolidation of Trustee.** Any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation shall be a bank, trust company or other comparable financial institution organized under, or having a branch duly qualified to conduct business as a bank, trust company or financial institution under, the laws of the United States of America or any of the states thereof, and shall have a capital and surplus aggregating at least the equivalent of U.S. \$100,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 9.14. Trustee's Liens.** The Trustee covenants and agrees, for the benefit of the Company and the holders from time to time of the Trust Certificates, to keep the Trust Equipment free and clear at all times of any Trustee's lien, claim or encumbrance.

**SECTION 9.15. Trust Certificates Owned by Company Deemed Not Outstanding.** In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by any Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

## **ARTICLE TEN**

### **MISCELLANEOUS**

**SECTION 10.1. Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.** Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an

instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority.

(b) The ownership of Trust Certificates shall be determined by the registry books to be kept as provided in Section 9.4 hereof.

**SECTION 10.2. Limitation of Rights.** Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

**SECTION 10.3. Binding Upon Successors and Assigns.** Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, including any subsequent holders of the Trust Certificates.

**SECTION 10.4. Amendments, Waiver and Termination.** Any provision of this Agreement or the Trust Certificates may be amended or waived as provided in a written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates with the consent of the Company and the Trustee, copies of which shall have been delivered by the Company to any holder of the Trust Certificates who did not execute such written direction, provided, however, that without the consent of each holder of the Trust Certificates, no such amendment or waiver shall (a) change the amount of principal, change the amount or dates of payment of installments of principal, change the rate or change the time of payment of interest with respect to the Trust Certificates, or effect the time or amount of any required redemption or prepayment of principal thereof, (b) change the amount of or change the time of payment of any Rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, (c) change the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver, (d) release any Trust Equipment from this Agreement which has been accepted and settled for under Article 5, otherwise than as specifically contemplated by the provisions hereof, or (e) modify any of the provisions of this Section 10.4. In the event the Company desires to propose an amendment or waiver

which, in the reasonable judgment of the Company and the Trustee, shall not be materially adverse to any holder of a Trust Certificate, then the Trustee may give each holder written notice thereof, which notice shall specify in detail any such proposed amendment or waiver and state clearly that such amendment is not in the judgment of the Trustee, materially adverse to any holder of a Trust Certificate and is proposed to become effective 45 days after the giving of such notice unless any holder gives written notice to the Trustee of its objection to such proposed amendment or waiver within the 45-day period following such notice from the Trustee. Such amendment or waiver shall become effective only at the expiration of such 45-day period. If such proposed amendment or waiver is objected to in writing (which writing shall specify the grounds for such objection) at or prior to the end of such 45-day period by any holder of a Trust Certificate, it shall not become effective except upon the written direction of the holders of at least 51% of the outstanding principal amount of the Trust Certificates as aforesaid. Except as the context otherwise requires, the term "Agreement" means this Agreement as supplemented pursuant to this Section 10.4.

**SECTION 10.5. Notices.** All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by prepaid courier to (a) in the case of the Company, at its office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of a holder, at the address shown upon the books for the registration of the Trust Certificates maintained at the Trustee's Principal Office, and (c) in the case of the Trustee, at its office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the receipt of the prepaid courier attached, shall be conclusive evidence of the giving of such demand, notice or communication.

**SECTION 10.6. Counterparts.** This Agreement has been simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**SECTION 10.7. Date of Execution.** This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee. This Agreement shall be effective as of the date and year first above written.

**SECTION 10.8. Effect of Headings.** The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 10.9. Illinois Law to Govern.** The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

**SECTION 10.10. Legal Holidays.** In any case where the date of any dividend payment or date of payment of any required installment of principal or date of redemption or prepayment in whole or in part of the Trust Certificates or date of payment of premium, if any, or the maturity date of any Trust Certificates or the date of any notice required by the Agreement is, at the place where payment is to be made or notice is to be given (or, in the event of wire transfers requested pursuant to Section 3.2, the place to which such wire transfers are to be made), a legal holiday or a day on which banking

institutions are authorized by law to close, then payment of the dividends, principal amount or premium, if any, as the case may be, may be made on the next succeeding day which is not a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends or interest shall accrue for the period after such nominal date.

**SECTION 10.11. Severability.** Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts or portion which may, for any reason, be hereafter declared invalid.



IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed on the eighteenth date of July, 1989.


HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY

By  \_\_\_\_\_  
Senior Vice President - Finance  
and Chief Financial Officer

ATTEST:

  
Assistant Secretary

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF C O O K     )

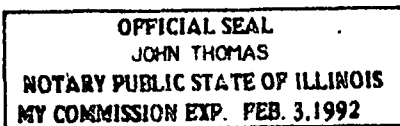
On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is Vice President of Harris Trust and Savings Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission expires on \_\_\_\_\_

[NOTARIAL SEAL]

STATE OF ILLINOIS   )  
                              ) SS  
COUNTY OF COOK       )

On this 18 day of JULY, 1989, before me personally appeared Glenn W. Dodd, to me personally known, who, being by me duly sworn, says that he is Senior Vice President-Finance and Chief Financial Officer of The Atchison, Topeka and Santa Fe Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



John Thomas

My Commission expires on \_\_\_\_\_

[NOTARIAL SEAL]

EQUIPMENT TRUST, SERIES U  
Dated March 1, 1989

SCHEDULE A

| <u>No. of<br/>Units</u> | <u>Description</u>   | <u>Estimated Costs</u> |                     |
|-------------------------|--|------------------------|---------------------|
|                         |  | <u>Per Unit</u>        | <u>Total</u>        |
| 10                      | GP60, 3800 H.P., four axle, diesel-electric locomotives (including event recorders); General Motors Corporation (Electro-Motive Division), builder. Nos. 4020, 4022, 4024, 4026, 4028, 4030, 4032, 4034, 4036, 4038. | \$1,253,205            | \$12,532,050        |
| 10                      | GP60, 3800 H.P., four axle, diesel-electric locomotives; General Motors Corporation (Electro-Motive Division), builder. Nos. 4021, 4023, 4025, 4027, 4029, 4031, 4033, 4035, 4037, 4039.                             | 1,258,055              | 12,580,550          |
| 10                      | Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders; General Electric Company, builder. Nos. 7430, 7432, 7434, 7436, 7438, 7440, 7442, 7444, 7446, 7448.                        | 1,238,329              | 12,383,290          |
| 10                      | Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives; General Electric Company, builder. Nos. 7431, 7433, 7435, 7437, 7439, 7441, 7443, 7445, 7447, 7449.   | <u>1,231,489</u>       | <u>12,314,890</u>   |
| 40                      | TOTAL UNITS  |                        | <u>\$49,810,780</u> |